

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. KEV WAYNE
Case No. D2023-1480

1. The Parties

The Complainant is Archer-Daniels-Midland Company, United States of America, represented by Innis Law Group LLC, United States of America.

The Respondent is KEV WAYNE, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <adm-us.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 13, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on April 13, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on May 31, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Respondent whose identity was initially unknown because of the use of a privacy shield was identified by the Registrar at the request of the Center, and the Complaint amended accordingly.

4. Factual Background

The Complainant Archer-Daniels-Midland Company is widely known by its initials ADM, in which it also owns registered trademark rights. The Complainant is a global agribusiness which was founded in 1902, serves 200 countries, owns more than 800 facilities worldwide, and employs over 38,000 people. In 2022, the Complainant had worldwide net sales of USD101 billion. In the United States, the ADM mark was adopted in 1923, and continuously used since for a wide variety of goods and services, including but not limited to financial services.

The Complainant is the owner of several trademark registrations for the ADM mark, especially:

United States Trademark Registration ADM No. 1,386,430 registered on March 18, 1986 and duly renewed;

Relevantly in Viet Nam the ADM mark No. 58868, registered on December 2, 2004, was adopted and has been continuously used since 2001 for a wide variety of goods and services in International Classes 01, 03, 04, 05, 12, 16, 29, 30, 31, 33, 35, 39, and 42.

The disputed domain name was registered on February 16, 2023, and does not resolve to an active website. The disputed domain name was used to send emails purporting to come from the Viet Nam office of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant asserts that because of global use and promotion, the ADM trademark has acquired an international reputation and goodwill to such an extent that it is now well-known and famous. The Complainant says that it aggressively pursues abuses of its trademark rights in relation to ADM. It commonly opposes attempts by third parties to register this mark anywhere in the world. The Complainant says it also aggressively counters attempts to use its intellectual property to commit cyber fraud, and closely monitors infringing domain names. The Complainant points out that it has successfully brought multiple UDRP complaints like the present one in recent years and has also aggressively enforced its rights in the financial services sector. The Complainant asserts that it has a wholly owned subsidiary, ADM Investor Services, Inc. ("ADMIS"), which has been a leader in the futures brokerage industry for more than 40 years, with branches and affiliates around the world.

The Complainant contends that the Respondent completely incorporated its ADM mark into the disputed domain name for the sole purpose of impersonating ADM employees, contacting third-party vendors/customers and requesting that they provide sensitive information and payment. The disputed domain name is said to be visually confusingly similar to the ADM trademark.

Past panels, the Complainant says, have maintained that the presence of a recognizable trademark in a domain name is sufficient to amount to confusing similarity, irrespective of the presence of other words or letters. The Complainant contends that "ADM" is the recognizable and most prominent portion of the disputed domain name as it encompasses the ADM mark in its entirety. The Complainant cites some

previous panel decisions that found that domain names that wholly incorporated its ADM mark were confusingly similar to that mark. The hyphenated “-us” suffix does not distinguish the domain name from the ADM trademark, the Complainant says, and the addition of “store” does nothing to distinguish the disputed domain name from the ADM mark. The word “store” is a generic word, the Complainant points out, that does not add distinctive value to the disputed domain name, while ADM, being a trademark, is the prominent portion of <adm-us.store>. For that reason, the Complainant maintains, the disputed domain name is confusingly similar to the ADM trademark. The Complainant points to previous panel decision that have held the same regarding the inclusion of the word “store” within domain names specifically. Based on multiple past panel proceedings in which the Complainant has been successful, and which it cites at length, the Complainant reiterates its point that the disputed domain name is identical or confusingly similar to its ADM mark, and the “-us” suffix and “.store” do nothing to distinguish the domain name concerned from the ADM trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. Upon the Complainant’s information and belief, the Respondent has not been commonly known by the names ADM or ADM-US.STORE. In any case, the Complainant says, any legitimate rights or interests in the domain name are negated by the Respondent’s attempt to fraudulently impersonate ADM logistics employees and ADM logistics business email addresses and so gain access to ADM’s vendor/customers’ sensitive information. The Complainant contends that the Respondent is using the disputed domain name to convince ADM’s vendors/customers that the emails they receive are being sent by an employee of ADM, or that they are somehow affiliated with ADM. In reality, the Respondent’s actions in this regard are a clear showing of bad faith. The Complainant also says that at this time, there is no evidence of the Respondent’s use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the domain name.

The Complainant points out that at the date of the filing of its Complaint, the website associated with the disputed domain name remained inactive. This is said to provide evidence that the Respondent is not using the disputed domain name to pursue any legitimate business interest. Upon the information and belief of the Complainant, the Respondent has only used the disputed domain name to send fraudulent emails that impersonate ADM employees, demonstrating its intent to mislead those receiving the emails and to obtain their sensitive information. Previous panels have determined that such schemes *prima facie* demonstrate the absence of legitimate interests or rights in the disputed domain names, the Complainant says.

The Complainant also maintains that the Respondent was well aware of the ADM trademark and the Complainant’s rights in that mark prior to registering the disputed domain name on February 16, 2023. The Respondent’s registration of the disputed domain name alone is sufficient to support a finding of bad faith due to the fame of the ADM trademark, the Complainant says, taken together with the fact that the Respondent used the disputed domain name for the purpose of sending fraudulent emails a mere twenty-one (21) day after registration. The Complainant asserts that the Respondent is relying on the ADM trademark, the Complainant’s name and its global online presence to impersonate ADM’s logistics team by way of the disputed domain name, and thus pursuing fraudulent and bad faith purposes. The Complainant says that it believes that the Respondent’s only use of the disputed domain name has been to send fraudulent emails to attempt to access ADM vendor/customers’ sensitive information, by relying on a likelihood of confusion with ADM’s trademark as to the source of the email because of the address, email request, and website link included in the email. This fact alone is sufficient to establish bad faith the Complainant says, but additionally the Respondent: signed the fraudulent email as purporting to emanate from a logistics intern; included ADM’s Vietnam Regional Headquarters’ address as well as a slightly altered telephone number; included the ADM trademark and ADM’s allegedly well-known logo; and included the hyperlink “adm.com”, which links to Complainant’s legitimate website. Thus, the Respondent intentionally created the setting for reliance by a recipient on the misleading impression that the malicious email came from a legitimate “@adm.com” email address. The actual email account from which the email was sent was a “@adm-us.store” account.

For these reasons, the Complainant says, it is clear that the Respondent has registered the disputed domain name and sent the fraudulent emails associated with that domain name solely to commit fraud and obtain an ADM vendor/customer's sensitive information. In other words, what the Respondent has done amounts to an intentional attempt to create a likelihood of confusion with the Complainant's ADM trademark and trade off the goodwill associated with it and with its "www.adm.com" official website. The Complainant asserts that for those reasons the disputed domain name should be transferred to it.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name is not identical to the ADM registered trademark of the Complainant. However, that mark is immediately recognizable within the disputed domain name. The additional inclusion of "-us" does not detract from this fact, which is in itself considered sufficient to satisfy the requirement of confusing similarity as found in the first element of the Policy.

The TLD ".store" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the ADM registered trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent has chosen not to reply to any of the contentions of the Complainant and has therefore not put any material before the Panel that could support the recognition of rights or legitimate interests on its part. It can be inferred from the Complainant's submissions that it has not authorized the Respondent to make any use of its ADM registered trademark, and there is nothing to indicate that the Respondent is commonly known by the disputed domain name or has any common law or statutory rights to the acronym ADM. It appears that the only use the Respondent has made of the disputed domain name is for the purpose of a phishing scheme which is described under section C. below. That kind of use is deceptive or even fraudulent and therefore not of a kind to result in the recognition of rights or legitimate interests vesting in the party that engages in it.

Therefore, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The ADM trademark of the Complainant has attracted extensive goodwill in many jurisdictions. It is hard to imagine that the Respondent was unaware of it and the Complainant's trademark rights vesting in it at the time of registration of the disputed domain name. A ready Google search would have revealed the ownership and rights of the Complainant with respect to the ADM mark, and the scale of its global and exclusive use in its sphere of business. The composition of the disputed domain name also appears quite deliberate and suggests an understanding of the trademark qualities of 'ADM'.

In any case, by virtue of the material put before the Panel by the Complainant, the Respondent has used the disputed domain name in an attempt to deceive an unsuspecting client of the Complainant and rob them of private and sensitive data. The only purpose this can serve is to defraud the client by impersonating the

Complainant and obtaining payment of fake invoices or like instruments. The disputed domain name has not been put to any other use and does not resolve to an active website, so there is nothing before the Panel that could in all honesty justify the acquisition of the Respondent of a domain name that incorporates a third party's highly reputed and widely registered trademark.

Therefore, the Panel holds that the disputed domain name was registered and used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <adm-us.store> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: June 14, 2023