

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Lori Comb Case No. D2023-2206

1. The Parties

Complainant is Archer-Daniels-Midland Company, United States of America (“United States”), represented by Innis Law Group LLC, United States.

Respondent is Lori Comb, Nigeria.

2. The Domain Name and Registrar

The disputed domain name is <admfr.com> which is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2023. On May 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 those in the Complaint (Not Disclosed Not Disclosed, My Domain Provider). The Center sent an email communication to Complainant on May 23, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On May 24, 2023, Complainant filed an amendment to the Complaint.

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 Respondent of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 28, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on July 20, 2023. This Panel finds that it was properly constituted. This 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.

4. Factual Background

Complainant, based in the United States, is engaged in the agribusiness sector in multiple countries around the world.

Complainant has rights over the ADM mark for which it holds several mark registrations in a number of jurisdictions, such as United States Registration No. 1,386,430 registered on March 18, 1986, in classes 1, 4, 12, 16, 29, 30, 31, 33 and 39, with stated first use in 1923.

The disputed domain name was registered on February 28, 2023. Before the Complaint was filed, the disputed domain name was used as email address and, according to Complainant, the disputed domain name did not resolve to an active website.

5. Parties' Contentions

A. Complainant

Complainant's assertions may be summarized as follows.

Founded in 1902, Complainant now serves 200 countries, owns more than 800 facilities worldwide, employs over 38,000 people, and has become one of the world's most premier agribusinesses.

Complainant is widely known by its initials as ADM. Due to the international nature of Complainant's business and its online presence, and the promotion and continued global use of its name and brands, Complainant has built up international goodwill and reliability in its ADM mark, which is now well known and famous. Complainant does not permit the unauthorized use of its marks, and has successfully brought a number of UDRP complaints in recent years.

The disputed domain name is confusingly similar to Complainant's ADM mark. The disputed domain name completely incorporates the ADM mark, which is its most prominent portion, while the addition of "fr" in the disputed domain name does nothing to distinguish it from the ADM mark.

Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not been commonly known by "adm" or the disputed domain name. There is no active website linked to the disputed domain name, and there is no evidence of Respondent's use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Respondent is not making a legitimate noncommercial or fair use of the disputed domain name since Respondent has only used it to send fraudulent emails impersonating Complainant's employees.

Respondent learned of a confidential email conversation between two of Complainant's employees and a Complainant's distributor. Respondent registered the disputed domain name upon learning of the ongoing email conversation, solely because the disputed domain name closely resembled the <adm.com> domain name utilized in Complainant's employees' email addresses, and deliberately added the letters "fr" in the disputed domain name to establish an association with France due to the fact that such Complainant's employees whom Respondent was impersonating were based in that country. Respondent utilized the disputed domain name's email addresses with the real names of Complainant's employees in order to deceive a Complainant's distributor to provide payment to an unauthorized bank account. Respondent used the same writing style in its sign off as Complainant's employee in order to resemble said employee as closely as possible, and copied the signature information of Complainant's employee in its emails to

Complainant's distributor, which included the employee's position and contact information.¹ Any legitimate rights or interests in the disputed domain name are negated by Respondent's attempt to fraudulently impersonate Complainant's employees and business email addresses, and deceptively receive payments from a Complainant's distributor.

Respondent was well aware of Complainant's ADM mark prior to registering the disputed domain name, whose mere registration is alone sufficient to make a finding of bad faith due to the fame of the ADM mark. The fact that the disputed domain name was registered only the day before the initial fraudulent email was sent from an email address associated with the disputed domain name also supports the finding that it was registered in bad faith.

Respondent registered the disputed domain name solely to commit fraud and receive unauthorized payments, by impersonating Complainant's employees. These actions indicate Respondent's intentional and bad faith attempt to create a likelihood of confusion with Complainant's ADM mark and <adm.com> domain name. As a part of its phishing scheme, Respondent created multiple email addresses with the disputed domain name, using the real names of Complainant's employees, for the purposes of impersonating such employees and deceiving a Complainant's distributor, which is sufficient to establish bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinulescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is undisputed that Complainant has rights over the ADM mark.

Since the addition of a generic Top-Level Domain ("gTLD") *i.e.* ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the ADM mark in its entirety, albeit followed by "fr". It is clear to this Panel that the ADM mark is recognizable in the disputed domain name and that the addition of such "fr" characters in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

¹ Attached to the Complaint are copies of such email communications ranging from February 23, 2023, through March 9, 2023, initially to/from the <adm.com> email addresses of Complainant's employees, and afterwards from/to email addresses associated with the disputed domain name that replicate the names of such Complainant's employees as they appear in their <adm.com> email addresses.

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

There is no evidence in the case file of circumstances of the type specified in paragraph 4(c) of the Policy, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

Complainant asserts that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. As further elaborated in Section C. below, the evidence in the file shows that the disputed domain name was used to configure email addresses for sending phishing email communications to a Complainant's distributor, conveying the impression that the sender is associated with Complainant, that is, the disputed domain name was used to try to obtain a payment by impersonating an employee of Complainant, a practice commonly known as phishing.² Such use demonstrates neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

The evidence in the case file clearly shows that Respondent's choice of the disputed domain name was deliberate for purposes of sending phishing emails.³ The fact that the disputed domain name incorporates Complainant's ADM mark followed by "fr" (which letters are commonly used to refer to France), coupled with the email communications sent to a Complainant's client from an email account linked to the disputed domain name that confusingly resembles the <adm.com> email account of a Complainant's employee based in France and using such employee's name and contact details, lead to the inevitable conclusion that Respondent registered and used the disputed domain name in bad faith.

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its confusing similarity with Complainant's ADM mark (and Complainant's domain name <adm.com> that Complainant uses for employees' email addresses), with the intention of impersonating Complainant's employees and to commercially benefit therefrom by deceiving Complainant's clients through phishing emails, which denotes bad faith.

In light of all the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

² See *Olivetti S.p.A v. mez inc*, WIPO Case No. [D2015-1934](#): "Respondent's use of the Domain Name in a phishing scheme to divert customer payments from the Complainant to the Respondent did not constitute either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name"; *Syngenta Participations AG v. Guillaume Texier, Gobain Ltd*, WIPO Case No. [D2017-1147](#): "A registrant cannot acquire rights or legitimate interests by the use of a domain name as an email address from which to send phishing emails".

³ See *BinckBank N.V. v. Helo Holdings LTD*, WIPO Case No. [DNL2010-0014](#): "Respondent in the present case apparently targeted Dutch students by pretending to be the Complainant and sending them an offer from an e-mail address associated with the Domain Name [...] Phishing activities pose a severe threat to customers, trademark holders and third parties". See *Yardi Systems, Inc. v. Abm Black*, WIPO Case No. [D2019-0057](#): "Respondent is not using the disputed domain name to resolve to a web site, but rather is using it for spear phishing, employing the disputed domain name in an email address [...] This is classic bad faith registration and use". See also section 3.4 of the [WIPO Overview 3.0](#).

7. Decision

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

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: August 3, 2023