

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Alx Tom
Case No. D2023-2327

1. The Parties

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

The Respondent is Alx Tom, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <admfxs.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 26, 2023. On May 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 29, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on July 4, 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.

4. Factual Background

The following facts are undisputed.

The Complainant is a multinational company headquartered in the United States. Originally a food and ingredients company, the Complainant offers goods and services beyond agriculture, including financial, investment, brokerage and business management services; fuel production, including bioethanol and biodiesel; logistics services (agricultural storage and transportation services); and research and development services. The Complainant provides financial services through ADM Investor Services, Inc. (“ADMIS”) and its branches throughout the world. ADMIS, which is located in Chicago, Illinois, has been a leader in the futures brokerage industry for over 40 years. Consumers can use ADMIS’s services online to make bids on commodities, such as grains. Customers can also use ADMIS’s services online to gain access to its various trading platforms, stock quotes, stock charts, and other stock related news.

The Complainant was founded in 1902 and is now an international, multi-billion dollar company with over 38,000 employees, serving more than 200 countries around the world, including the Respondent’s jurisdiction Hong Kong, China.

The Complainant provides evidence that it owns a large international portfolio of trademark registrations for the mark ADM. Examples of such registrations include United States trademark registration number 1386430, registered on March 18, 1986, claiming first use in commerce in 1923; and Hong Kong, China, trademark registration number 303973500, registered on November 24, 2016. The Complainant also has an extensive portfolio of domain name registrations, including its main domain name <adm.com>. The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is April 18, 2023. The disputed domain name has been used in connection to a fraudulent investment app. At the time of the filing of the Complaint, the website connected to the disputed domain name was inactive.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, to the extent relevant, the Complainant contends the following.

The Complainant discovered the disputed domain after being alerted by a customer who confused the fraudulent investment and trading app found on the website to which the disputed domain name resolved.

The Respondent prominently displayed a stylistically modified version of the Complainant’s trademarked name and logo on that website. A customer who visited this website contacted the Respondent via a WhatsApp link provided on this website to obtain more information about the offered investment services, under the assumption he was contacting an agent of the Complainant. Upon communicating with the Respondent, the Respondent falsely claimed to be associated with the Complainant and its trading services, and explained to the customer that he can begin making investments in the Complainant through the fraudulent app. The Respondent instructed the customer to create an account and download the app via a link the Respondent provided. The link the Respondent provided directed the customer to a website which also prominently displayed the Complainant’s name and logo. Through further investigation, the Complainant also discovered a Facebook page associated with the Respondent’s website, claiming to provide “financial services”. The Respondent also provided a similar WhatsApp link to communicate with visitors and deceive them into using the fraudulent investment app.

At the time of the filing of this Complaint, the website is inactive.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of "fxs" may bear on assessment of the second and third elements, the Panel finds the addition of such letter does not prevent a finding of confusing similarity between the disputed domain name and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

It is clear from the record before the Panel that the Respondent has been using the disputed domain name for illegal activities, in particular attempting to defraud consumers, through impersonating the Complainant and its activities.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel refers to its considerations under 6.B.

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

- The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, and in particular, the fact that the Respondent is clearly attempting to defraud consumers, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <admfxs.com>, be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: July 14, 2023