

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Derrick Tab
Case No. D2023-2545

1. The Parties

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

Respondent is Derrick Tab, Uganda.

2. The Domain Name and Registrar

The disputed domain name <archerdaniels.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on June 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. Respondent sent an email to the center on June 23, 2023 and July 12, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on July 24, 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

Per Complaint, Complainant, under the company name Archer-Daniels-Midland Company, is widely known by its corporate name and its initials “ADM” and has an international presence in various industries, including in the global agricultural commodity and processing industry. Although it was originally a food and ingredients company, Complainant’s business areas now include printing and publishing; financial and business management services; fuel production, including bioethanol and biodiesel; logistics services (agricultural storage and transportation services); and research and development services. Complainant was founded in 1902 and is now an international, multi-billion-dollar company with over 30,000 employees serving more than 140 countries around the world. It had global revenues of over USD 64 billion in 2020 and it maintains its global presence online, via its various websites. Complainant owns trademark registrations for ADM, including the United States of America trademark registration no 1386430 registered on March 18, 1986, for goods and services in international classes 1,4,12, 16, 29, 30, 31 and 39.

The Domain Name was registered on March 8, 2023 and it was used in a fraudulent scheme, including impersonation and deceptive email communications. Upon Complainant’s information and belief, Respondent registered the Domain Name and then created email addresses associated with it, including one that misappropriated the identity of an actual Complainant’s employee, as “[...]@archerdaniels.com”. Impersonating such Complainant’s employee, Respondent contacted a sales representative at a shipping and packaging supply company, falsely claiming to be a Complainant’s Purchasing Manager. In their communications, Respondent requested a quote on an order. Respondent included Complainant’s name, address of Complainant’s Chicago office, a hyperlink to Complainant’s official website, as well as a second fraudulent email address, “info@archerdaniels.com”, in the email signature. Upon Complainant’s information and belief, the sales representative responded to Respondent’s fraudulent emails and provided Respondent with the order details requested. Furthermore, upon Complainant’s information and belief, the sales representative offered to send to Respondent sample products prior to placing the order, upon which Respondent responded with the excuse of being out of the country, thus was unable to receive samples. Moreover, the Domain Name redirected to Complainant’s official website, “www.adm.com”.

Currently, the Domain Name leads to an inactive website.

5. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

On June 23, 2023, Respondent, sent an email to the Center, claiming that he is a web developer and registered the Domain Name at the request of a person whose name is identical to the name of the purported employee of Complainant impersonated by Respondent in the above email communications. The Panel does not find this explanation credible, as Respondent has not provided any evidence proving that he is a web developer. On July 12, 2023, the Center received another email by Respondent confirming that the website where the Domain Name was leading was taken down and offering to transfer the Domain Name.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant owns trademark registrations for ADM but it does not appear that Complainant owns any trademark registrations for “Archer-Daniels-Midland”, which is the Complainant’s corporate name.

According to the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) section 1.1.1 the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks. Per Complaint and as not disputed by Respondent, Complainant’s corporate name is well-known and long-standing associated with Complainant’s products such that Complainant has common law rights in ARCHER-DANIELS-MIDLAND for the purposes of the Policy. The Panel therefore finds on balance that Complainant has common law rights on the corporate name ARCHER-DANIELS-MIDLAND. See also *Archer-Daniels-Midland Company v. Registration Private, Domains By Proxy, LLC / Chantelle Columbus*, WIPO Case No. [D2022-1656](#).

The Panel also finds that the Domain Name is confusingly similar to ARCHER-DANIELS-MIDLAND, which in its dominant part, ARCHER DANIELS is fully incorporated in the Domain Name. The only differences are the absence of the word MIDLAND and the hyphens, with the result that ARCHER-DANIELS-MIDLAND remains recognizable in the Domain Name ([WIPO Overview 3.0](#), section 1.7).

The generic Top-Level Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to Complainant’s common law rights in ARCHER-DANIELS-MIDLAND.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any formal response, instead he has merely provided a pretextual

explanation on the registration of the Domain Name, which the Panel does not find credible. Respondent has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, as Complainant has demonstrated, the Domain Name, was used to create an email address and send emails in the context of a fraudulent scheme to impersonate Complainant and defraud third parties, using genuine information pertaining to a Complainant's employee and submitting false identity details. The use of the Domain Name for an illegal activity such as constructing an email composition containing the Domain Name for deceiving purposes cannot confer rights or legitimate interests on Respondent (*L'Oréal v. Cimpres Schweiz GmbH*, WIPO Case No. [DCO2017-0021](#)). Furthermore, the Domain Name redirected to Complainant's official website, while it currently resolves to an inactive website.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. Per Complaint, Complainant's common law rights on ARCHER-DANIELS-MIDLAND had been acquired at the time of the Domain Name registration. The Panel finds it more likely than not that Respondent had Complainant's rights in mind when registering the Domain Name, given the use of the Domain Name which directly targeted Complainant.

As regards bad faith use, Complainant demonstrated that the Domain Name was employed in a fraudulent scheme impersonating Complainant, namely used to create an email address for emails sent in the context of a fraudulent scheme to impersonate Complainant, pretending to be Complainant's employee and submitting false details to third parties. Furthermore, the Domain Name redirected to Complainant's official website. Use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending deceptive emails, phishing, identity theft, or malware distribution ([WIPO Overview 3.0](#), section 3.4). This pattern can be used in support of bad faith registration and use (*Arla Foods Amba v.*

Michael Guthrie, M. Guthrie Building Solutions, WIPO Case No. [D2016-2213](#); [WIPO Overview 3.0](#), sections 3.3 and 3.4).

The Panel notes that the Domain Name currently leads to an inactive website. The non-use of a domain name does not prevent a finding of bad faith under the circumstances of this proceeding (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

Under these circumstances and on this record, the Panel finds that Respondent registered and is using the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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, <archerdaniels.com>, be transferred to Complainant.

Marina Perraki

Sole Panelist

Date: August 7, 2023