

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. ABBVIE inc
Case No. D2024-0737

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 ABBVIE inc, Gambia (the).

2. The Domain Name and Registrar

The disputed domain name <adm-project.com> (the "Domain Name") is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 16, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 20, 2024, 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 February 20, 2024.

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 February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 13, 2024.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on April 4, 2024. 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 Complainant was founded in 1902, and owns more than 800 facilities worldwide, employing over 38,000 people. In 2022, worldwide net sales of the Complainant were USD 101 billion. Although it was originally a food and ingredients company, its business areas also now include printing and publishing, financial and business management services, fuel production, logistics services (agricultural storage and transportation services) and research and development services. The Complainant maintains its global presence online, via various websites. Consumers can use the Complainant's services online to make bids on commodities, such as grains, and to learn more about the futures brokerage industry so that they can make informed decisions to better their portfolios. Customers can also use services online to gain access to its various trading platforms, stock quotes, stock charts, and other stock related news.

The Complainant holds, inter alia, the following trade mark registrations (the "Trade Marks"):

- United States wordmark ADM registered under No. 1386430 on March 18, 1986; and
- European Union wordmark ADM registered under No. 913194 on February 15, 2001.

On its website at "www.adm.com", the Complainant is using a logo consisting of a design of a green leaf and the stylized letters ADM in blue (the "ADM logo").

The Domain Name was registered on December 13, 2023 and was used to create an email address which appeared to belong to a legitimate ADM employee. The signature of the email contained the ADM logo and the Complainant's address in Chicago. The email address was used to send an email to purchase products from a third party, also expressing interest in "any bulk purchasing deals," claiming they "are in a position to purchase these goods immediately for [their] forthcoming maintenance [...]." The Complainant did not intend to purchase the referenced goods and became aware of the contents of this email when it was received from the third party involved.

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 Domain Name.

Notably, the Complainant contends that, taking into account the fame of the Trade Marks and the Complainant's extensive online presence, the Domain Name is visually confusingly similar to the Trade Marks, as it incorporates the ADM word mark which is the most prominent and recognizable portion of the Domain Name. According to the Complainant, the inclusion of the term "-project" in the Domain Name does nothing to distinguish it from the Trade Marks, on the contrary increasing the confusing similarity by incorporating into the Domain Name an allusion to the Complainant's ongoing projects. Therefore, the Complainant concludes, the Domain Name is confusingly similar to the Trade Marks.

The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name, since (1) the Respondent has not been commonly known by the Domain Name; (2) any legitimate rights or interests in the Domain Name are negated by the Respondent's attempt to fraudulently impersonate an employee of the Complainant and deceive another business into believing they were communicating with a

real representative of the Complainant, which demonstrates a clear intent of fraud and bad faith; while (3) such use shows that the Respondent is not making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain. In addition, the Complainant points out that the website under the Domain Name has remained inactive, so that the Respondent does not use nor has made preparations to use the Domain Name with a bona fide offering of goods or services.

The Complainant also contends that the Respondent is using the Domain Name in bad faith to impersonate the Complainant and, in particular, one of its employees, for fraudulent purposes, in particular to attempt to mislead at least one third-party company into believing they have received legitimate business inquiries from the Complainant, by using the name of one of the Complainant's employees, its business location information, the Trade Marks and the ADM logo. Furthermore, the Complainant submits that the Respondent's registration of the Domain Name is in and of itself sufficient in this case for a finding of bad faith given that the Trade Marks are so well known internationally.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the Trade Marks in their entirety. The addition of a hyphen and the term "project" does not prevent a finding of confusing similarity between the Domain Name and the Trade Marks (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also, inter alia, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The generic Top-Level Domain ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has rights or legitimate interests in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the Trade Marks in their entirety with a descriptive term, it carries a risk of implied affiliation

([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name.

Furthermore, in view of the fact that the Domain Name is connected to an email address, used for an email impersonating an employee of the Complainant, attempting to mislead a third-party company into believing they have received legitimate business inquiries from the Complainant, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, nor does such use constitute a bona fide offering of goods or services.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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.

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Name, the Respondent was or should have been aware of the Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some 37 years after the registration of the earliest of the Trade Marks;
- the Domain Name incorporates the Trade Marks in their entirety, and this is not a generic term, nor a name that it is likely that a registrant would spontaneously think of when registering a domain name;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a Response to the Complaint; and
- the use of the Domain Name for an email address, from which at least one email was actually sent impersonating an employee of the Complainant, attempting to mislead a third-party company into believing they have received legitimate business inquiries from the Complainant.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith and, therefore, that the Complainant has established the third element of the Policy.

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-project.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: April 18, 2024