

## **ADMINISTRATIVE PANEL DECISION**

Archer-Daniels-Midland Company v. Maleek Berry, ADM Company  
Case No. D2024-3131

### **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 Maleek Berry, ADM Company, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <admsales.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 July 30, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 2024, 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 26, 2024.

The Center appointed Gary Saposnik as the sole panelist in this matter on September 2, 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, an agribusiness, was founded in the United States in 1902, now serves 200 countries, owns more than 800 facilities worldwide, and employs over 38,000 people. In 2022, worldwide net sales for the Complainant were USD 101 billion. Although the Complainant was originally a food and ingredients company, its business areas also 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.

The Complainant is the registrant of numerous worldwide trademark registrations for its ADM trademark, which was adopted and has been continuously used in the United States since at least as early as 1923 for numerous goods and services. These registrations include:

- United States Reg. No. 1386430, ADM, registered on March 18, 1986, in classes 1, 4, 12, 16, 29, 30, 31, 33 and 39;
- United States Reg. No. 2766613, ADM, registered on September 23, 2003, in classes 16, 35, 36, and 42;
- United States Reg. No. 2301968, ADM, registered on December 21, 1999, in class 5

The Complainant maintains its global presence online, via its various websites, including through its main website at <adm.com>. The “adm.com” website allows consumers to read about the history of the Complainant, describes its vast array of products and services, and provides consumers and business associates from around the world to learn about and communicate with the Complainant. The website also allows the Complainant’s customers to conduct business with the Complainant from anywhere in the world.

The disputed domain name was registered by the Respondent on June 10, 2024, and does not currently resolve to an active webpage. However, the disputed domain name has been used in fraudulent activities, including impersonation, deceptive email communications, as well as use of the Complainant’s trademark within the disputed domain name.

The Respondent created at least one email address associated with the disputed domain name, which misappropriated the identity of a legitimate employee who is an executive of the Complainant. The Respondent utilized this email address to target customers of the Complainant, seeking to request quotes for purchase of products. The Respondent’s correspondence claimed that they “are in a position to proceed immediately if the price is within our allocated budget”. The email included the executive’s name, with a false employment title and phone number, and included the actual physical address of the Complainant’s Chicago office.

According to the Whois information, the Respondent is an individual with an address in the United States, claiming to be ADM Company, with an address in Atlanta, and a phone number with an area code in South Carolina. Notably, the Respondent uses a “GMAIL” email address and not one affiliated with the disputed domain name.

#### **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, the Complainant contends the disputed domain name is confusingly similar to the Complainant’s ADM mark, as it is visually similar to the ADM mark, and similar to its <adm.com> domain name that is used to communicate with its customers and business associates. The inclusion of “sales” after the prominent ADM mark does not distinguish the disputed domain from the ADM mark. The disputed domain name is

similar in meaning or connotation, as they both consist of the same three letters, in the same order with no punctuation. ADM will be perceived by most consumers as an acronym and trademark for the Complainant, given the fame of its mark. Since the only difference is the inclusion of the term “sales”, which can be reasonably associated with the Complainant, the disputed domain name should be treated as conceptually identical.

Given the Complainant’s international presence in the agricultural and financial markets, the inclusion of ADM with “sales” will only lead the average consumer to believe the disputed domain name belongs to the Complainant. The Respondent is clearly targeting third-party companies who would be interested in doing business with the Complainant. Any individual who encounters any correspondence from the emails associated with the disputed domain name will be misled into believing that the communications are coming from, or are somehow affiliated with the Complainant. In addition, the disputed domain name may also be targeting potential infringers who are interested in purchasing the disputed domain name for other infringing purposes such as targeting the Complainant’s consumers or passing off their goods/services as the Complainant’s goods/services. The Complainant has brought a number of additional successful UDRP proceedings against other fraudulent domain names, which the Panel determined were identical or confusingly similar to the ADM mark.

The Complainant further alleges that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the name “ADMSALES.COM”, as the disputed domain name was used 3 weeks after registration in a fraudulent scheme impersonating the Complainant’s executive. Any claimed rights or legitimate interests in the disputed domain name are negated by the Respondent’s attempt to fraudulently impersonate an ADM employee, and deceive another business into believing they were communicating with a real ADM representative. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain.

The Complainant claims that the Respondent is using the disputed domain name to deceive individuals and third-party businesses and to tarnish the ADM mark. While the attendant website remains inactive, the Respondent does not use nor has made preparations to use the disputed domain with a bona fide offering of goods and services. Rather, as previously noted, the Respondent has used the disputed domain name to send fraudulent communications while impersonating a legitimate employee of the Complainant, to engage in fraudulent transactions. The Complainant argues that previous panels have determined that such schemes were prima facie showings of an absence of the respondents’ rights or legitimate interests in the domain names.

The Complainant also alleges that the Respondent registered and is using the disputed domain name in bad faith. As previously described, the Respondent registered the disputed domain name many years after the Complainant attained trademark rights in the ADM mark, and is using the disputed domain name in fraudulent emails in an attempt to mislead third-parties into believing they have received legitimate business inquiries from the Complainant. These facts alone are sufficient to establish bad faith. The Respondent is aiming to intentionally trade on the goodwill of the Complainant’s fame, trademarks, reputation, and online presence through the disputed domain name, and is in violation of the Complainant’s prior rights and international civil and criminal laws. The Respondent’s use of an actual ADM employee is especially egregious and is further evidence of the Respondent’s knowledge of the Complainant prior to registering the disputed domain name. These lead to no other conclusion than that the Respondent registered and is using the disputed domain name in bad faith.

## **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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "sales", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Previous Panels have similarly found confusing similarity with the ADM mark when the subject domain name has included ADM along with additional terms. *Archer-Daniels-Midland Company v. Abbie Inc.* WIPO Case No. [D2024-0737](#); *Archer-Daniels-Midland Company v. ifeco aladin, Wilmar Europe Trading*, WIPO Case No. [D2024-1697](#).

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.

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. [WIPO Overview 3.0](#), section 2.1.

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 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 such as those enumerated in the Policy or otherwise.

The Respondent used the disputed domain name to create and use an email address in a fraudulent attempt to impersonate an executive of the Complainant for communicating with third parties. The Respondent contacted a potential customer, attempting to mislead the customer into believing they have received legitimate business inquiries from the Complainant in an attempt to secure business. The fact that the Respondent used the name "ADM Company" as the registrant organization for the registration of the disputed domain name does not give rise to rights or legitimate interests, particularly noting the fraudulent attempt to impersonate the Complainant.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: 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. *Archer-Daniels-Midland Company v. Abbvie Inc.*, WIPO Case No. [D2024-0737](#) (respondent was using <adm-project.com> to impersonate ADM's current employee via fraudulent email); *Archer-Daniels-Midland Company v. ifeco aladin, Wilmar Europe Trading*, WIPO Case No. [D2024-1697](#) (Respondent was using <adm-nl.com> to impersonate an ADM employee in order to divert large amount of funds);

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name many years after the Complainant acquired significant rights in the ADM mark. The Respondent was obviously aware of the Complainant's mark, as it targeted an executive of Complainant when it created an email address including the executive's name. The Respondent used the disputed domain name in email in an apparent attempt to pass off and impersonate as an executive of the Complainant to fraudulently obtain business with third parties. The email additionally included a physical address of the Complainant's Chicago office. This use was clearly an intentional attempt to attract for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. *Archer-Daniels-Midland Company v. Abbvie Inc.*, WIPO Case No. [D2024-0737](#) (finding bad faith when the respondent impersonated the Complainant current employee to place a large order from a tire retailer); *Archer-Daniels-Midland Company v. ifeco aladin, Wilmar Europe Trading*, WIPO Case No. [D2024-1697](#) (finding bad faith when the respondent impersonated the Complainant's current employee in an attempt to change banking details and reroute a large payment). Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds 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 <admsales.com> be transferred to the Complainant.

*/Gary Saposnik/*

**Gary Saposnik**

Sole Panelist

Date: September 16, 2024