

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Bora Kira, Anderson Doug Mercury Co
Case No. D2023-3888

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 Bora Kira, Anderson Doug Mercury Co, United States.

2. The Domain Name and Registrar

The disputed domain name <myadmco.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 September 15, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 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 the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on September 20, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint.

Complainant filed an amendment to the Complaint on September 20, 2023. 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 September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. Respondent did not submit a response. Accordingly, the Center notified Respondent’s default on October 17, 2023.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on October 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

Complainant is a company based in the United States. For decades prior to the registration of the disputed domain name, Complainant has been offering agricultural products and services under the mark ADM in the United States and globally. In this regard, Complainant is the owner of several trademark registrations. These include, among others, United States Registration Nos. 1,386,430 (registered March 18, 1986), 2,301,968 (registered December 21, 1999), and 2,766,613 (registered September 23, 2003).

The disputed domain name was registered on August 21, 2023. Although it appears to currently resolve to an inactive webpage, Respondent has used an email address associated with the disputed domain name to engage in apparently fraudulent behavior whereby Respondent posed as an employee of Complainant, seeking to obtain sensitive financial information from a prospective business partner. Respondent has no affiliation with Complainant. Complainant has not authorized any activities by Respondent, nor any use of its trademarks thereby.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns the ADM mark, and that Complainant has corresponding trademark registrations along with a website located at "www.adm.com", which Complainant uses to communicate information with prospective consumers and business partners. Complainant contends that Respondent has incorporated in full its ADM mark into the disputed domain name, with the addition only of the dictionary word "my" along with the term "co", a common abbreviation for the word "company."

Complainant contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith to profit from the good will of Complainant's mark for Respondent's own commercial gain. In particular, Complainant contends that Respondent has acted in bad faith in registering the disputed domain name under a concealed privacy service and that Respondent has used a false identity to send out fraudulent emails that reference and refer to Complainant, in an apparent attempt to confuse potential or actual business partners of Complainant into providing sensitive financial information.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

This Panel must first determine whether the disputed domain name <myadmco.com> is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is. The disputed domain name directly incorporates Complainant's registered ADM mark, with the addition of the dictionary term "my" along with the term "co", a recognized dictionary abbreviation for the word "company."

Numerous UDRP panels have agreed that supplementing or modifying a trademark with dictionary terms does not prevent a finding of confusing similarity under this first prong of paragraph 4(a)(i) of the Policy. See, for example, *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. [D2000-1614](#) (transferring <ikeausa.com>); *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#) (transferring <ge-recruiting.com>); *Microsoft Corporation v. Step-Web*, WIPO Case No. [D2000-1500](#) (transferring <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. [D2000-1065](#) (transferring <cbsone.com>).

The Panel therefore finds that the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Policy provides some guidance to respondents on how to demonstrate rights or legitimate interests in the domain name at issue in a UDRP dispute. For example, paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include: (i) use of the domain name "in connection with a *bona fide* offering of goods or services;" (ii) demonstration that Respondent has been "commonly known by the domain name;" or (iii) "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."

Respondent did not submit a reply to the Complaint, however. Rather, as mentioned in Section 4 of this Panel's decision, Respondent has used an email account associated with the disputed domain name to engage in an apparent phishing scheme. Panels have categorically 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. Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interest in the disputed domain name, which Respondent has not rebutted.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. For example, paragraph 4(b)(iv) of the Policy states that bad faith can be shown where "by using the domain name [respondent has] intentionally attempted to attract, for commercial gain, Internet users to [respondent's] 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 [respondent's] website or location or of a product or service on [the] web site or location." As noted in Section 4 of this Panel's decision, the disputed domain name appears to currently resolve to an inactive web page. Respondent has, nevertheless, used the disputed domain name to set up an email account impersonating an employee of Complainant in a manner apparently calculated to confuse potential or actual business partners of Complainant into providing Respondent sensitive financial information.

Hence, Respondent is trading on the goodwill of Complainant's trademarks to attract Internet users, presumably for Respondent's own commercial gain. The Panel thus finds that despite passive website use, Respondent registered and used the disputed domain name with knowledge of Complainant's prior rights, thereby evidencing bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), Section 3.3, which notes that the "non-use of a domain name" does not necessarily negate a finding of bad faith, but rather, that a panel must examine "the totality of the circumstances." This is particularly so, given the use of the disputed domain name, which indicates an apparent familiarity with Complainant and its marks.

Overall, the Panel finds that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy.

7. Decision

For all 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 <myadmco.com> be transferred to Complainant.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Dated: November 7, 2023