

## **ADMINISTRATIVE PANEL DECISION**

Archer-Daniels-Midland Company v. Kali Willy  
Case No. D2023-4177

### **1. The Parties**

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

Respondent is Kali Willy, United States.

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

The disputed domain name <adm-agric.com> (the “Domain Name”) is registered with DreamHost, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2023. On October 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 9, 2023, 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 (Proxy Protection LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on October 12, 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 October 13, 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 October 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 13, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on December 1, 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 United States-based corporation engaged in a variety of business areas, including food and food ingredient production, printing and publishing, financial and business management services, fuel production, logistics services (agricultural storage and transportation services), and research and development services. Complainant owns the following trademark registrations relevant to this matter:

- ADM, U.S. Reg. No. 1386430, registered on March 18, 1986;
- ADM, U.S. Reg. No. 2301968, registered on December 21, 1999; and
- ADM, U.S. Reg. No. 2766613, registered on September 23, 2003.

Collectively, these registered trademark rights in the ADM trademarks are referred to herein as the “ADM Mark.”

The Domain Name was registered on September 11, 2023. At the time of filing the Complaint, the Domain Name did not resolve to an accessible website but the evidence reflects that it was used to send emails claiming to be from an executive of Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant asserts that its full corporate name is Archer-Daniels-Midland Company, which is widely known by its initials as ADM. Complainant presented evidence and citations to other cases to support its contention that its ADM Mark is famous. Complainant also alleges that Respondent registered the Domain Name and subsequently created at least one email address associated with the Domain Name, which misappropriated the identity of a legitimate ADM employee. Complainant provided evidence that Respondent targeted and contacted at least two different third-party companies with the intent to defraud those companies and their employees by attempting to place large fraudulent orders of products.

With respect to the first element of the Policy, Complainant points out that it owns multiple trademark registrations for the ADM Mark. Complainant alleges that the Domain Name consists of the ADM Mark with the addition of “-agric”, which strongly suggests a reference to “agriculture”. Complainant concludes by asserting that the Domain Name is confusingly similar to its ADM Mark.

With respect to the second element of the Policy, Complainant alleges that Respondent registered the Domain Name to use as an email address to perpetrate a fraudulent scheme. Specifically, Complainant provided evidence that Respondent sent emails using the names of Complainant's executives to two companies. Complainant concludes that this proves that Respondent had no rights or legitimate interests in the Domain Name.

With respect to the third element of the Policy, Complainant re-alleges that Respondent used the Domain Name for a scheme to attract, for commercial gain, unsuspecting applicants into its criminal activities and divulging sensitive personal and financial information. Complainant asserts that this amounts to registration and use of the Domain Name in bad faith.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Although Respondent defaulted, to succeed in this proceeding, paragraph 4(a) of the Policy requires Complainant to prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (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.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); and see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

### 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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview, section 1.2. On this point, Complainant has provided evidence that it is the owner of multiple registrations for the ADM Mark. The Panel also finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

### B. Rights or Legitimate Interests

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 Respondent lacks rights or legitimate interests in the Domain Name. 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<sup>1</sup> or otherwise.

As an initial matter, there is no evidence that Respondent is commonly known by the Domain Name. The Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Name, which adopts the Complainant's ADM Mark in furtherance of Respondent's fraudulent scheme to impersonate Complainant. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) ("the Panel notes that the respondent's name is "Bestinfo" and that it can therefore not be "commonly known by the Domain Name.")

The Panel finds that the purpose of registering the Domain Name was to engage in fraud, which is not a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 ("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."); see also, *Startup Group v. Whois Agent, Domain Protection Services, Inc. / Dominique Geffroy*, WIPO Case No. [D2020-3303](#) (finding an employment offer scam to be an example of use of a domain name for the illegitimate purpose of impersonating the complainant in the furtherance of a fraudulent scheme).

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Here, the evidence shows that Respondent registered the Domain Name to perpetrate a fraudulent scheme. Complainant's ADM Mark was intentionally chosen when the Domain Name was registered with the intent to impersonate Complainant for the purpose of engaging in a fraud to obtain thousands of dollars from companies that thought they were dealing with Complainant. Knowledge of Complainant's business and its ADM Mark is established by the use of the real name of Complainant's executive and the well-known nature of the ADM Mark. In light of the evidence demonstrating the fraudulent use of the Domain Name, there could be no other legitimate explanation except that Respondent intentionally registered the Domain Name to cloak its actions and deceive recipients into believing the emails were from Complainant. The Domain Name does not appear to have been registered for any other purpose as the Domain Name does not resolve to an active website. Such activity constitutes a disruption of Complainant's business and also establishes bad faith registration and use. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) In addition, registering a domain name with false contact details is commonly held to be bad faith under the Policy. See *Hermes International v. Jack Yong*, WIPO Case No. [D2017-1959](#) ("the fact of a non-existent postal address is difficult to explain"); *TBWA Worldwide, Inc. v. Karim Bendali*, WIPO Case No. [D2019-1932](#) (the postal address revealed by the Registrar was not accurate).

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<sup>1</sup> The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: "(i) before any notice to you of the dispute, your 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) you (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) you are 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 use of the Domain Name to conduct fraud constitutes a disruption of Complainant's business and also establishes bad faith registration and use pursuant to paragraph 4(b)(iii) of the Policy. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (Finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) As discussed above, Respondent used several other *indicia* of Complainant in addition to the Domain Name when communicating with third parties with the fraudulent purpose of misleading the recipients of the emails into believing they were communicating with the Complainant. In light of the actions undertaken by Respondent, it is inconceivable that Respondent coincidentally selected the Domain Name without any knowledge of Complainant. See *e.g.*, *Arkema France v. Steve Co., Steve Co Ltd.*, WIPO Case No. [D2017-1632](#).

Moreover, it does not matter that a website was not resolving from the Domain Name. [WIPO Overview 3.0](#), section 3.4. In finding a disputed domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email communications. See, *e.g.*, *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active websites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'").

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(ii) of the Policy and has established that Respondent registered and is using the Domain Name in bad faith.

## 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 Domain Name, <adm-agric.com>, be transferred to Complainant.

*/John C McElwaine/*

**John C McElwaine**

Sole Panelist

Date: December 15, 2023