

## **ADMINISTRATIVE PANEL DECISION**

### **Archer-Daniels-Midland Company v. ADM, ADM Case No. D2023-5357**

#### **1. The Parties**

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

Respondent is ADM, ADM, US.

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

The disputed domain name <adm-fortune.com> (the “Domain Name”) is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 26, 2023. On December 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 28, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on January 11, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 15, 2024.

The Center verified that the Complaint together with the amended 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 January 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 9, 2024.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on February 22, 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**

Complainant Archer-Daniels-Midland Company (well-known as “ADM”) was founded in 1902 and it now serves 200 countries, owns more than 800 facilities worldwide, and employs over 38,000 people. In 2022, Complainant’s worldwide net sales were USD 101 billion.

Complainant maintains its global presence online by way of various websites including its main website “www.adm.com”. Among other things, that website allows Complainant’s customers to conduct business with Complainant from anywhere in the world. Although Complainant was originally a food and ingredients company, its 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 owns many registrations for its ADM Mark (or the “Mark”) which it adopted and continuously used in the United States since at least 1923, including US Trademark Registration No. 1,386,430 (registered March 18, 1986).

The Domain Name was registered December 6, 2023. Respondent has been using the Domain Name in conjunction with the following activities: (1) displaying the ADM Mark on a subdomain (<m.adm-fortune.com>) of the Domain Name; (2) requesting website visitors’ personally identifiable information; (3) promoting a fraudulent investment application on a YouTube channel by displaying the ADM Mark and the Domain Name; and (4) using the name of one of Complainant’s employees in the videos promoting the fraudulent investment application. The YouTube videos were subsequently removed from YouTube.

More specifically, after creating the subdomain <m.adm-fortune.com>, Respondent displayed on that website a photo of a building sign from outside one of Complainant’s physical locations displaying one of Complainant’s trademarks (a composite mark that includes the ADM Mark and a leaf design), along with the same composite mark prominently displayed at the top of the website page. Additionally, the website uses the leaf design portion of Complainant’s mark in its favicon, in the same way that Complainant uses it on its “adm.com” domain name. The subdomain also displays text on the website in Complainant’s widely used dark blue and green colorway. The page also requests website visitors to register for an account using personally identifiable information, such as an email address.

After Complainant submitted its initial Complaint in this case to the Center, it revealed the registrant information of the Domain Name, as provided by the Registrar, in which Respondent fraudulently used Complainant’s trademarked acronym and portions of its physical address, as well as a phone number associated with Complainant, to register the Domain Name.

#### **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. The Domain Name incorporates the entirety of the well-known ADM Mark, and the “adm” portion of the Domain Name is the most prominent portion. “Fortune” is a term that does not detract from the similarity of the Domain Name as a whole to the ADM Mark. Given ADM’s international presence in the financial services markets, the combination of Complainant’s Mark ADM with the term “fortune” will only lead the average consumer to believe the Domain Name belongs to, or is in some way associated with ADM Mark.

Respondent has never been commonly known by the Domain Name as an actively traded global company interacting with customers and business associates around the world online. Respondent's attempts at attracting unsuspecting individuals through online advertising on both a YouTube channel and through a subdomain associated with the Domain Name is clearly a ploy at reaching the public in a manner plausibly associated with ADM Mark. Complainant has not licensed, consented to, or otherwise provided any indication that it is, or has ever been, affiliated with Respondent. Complainant has never authorized the use of its ADM Mark to Respondent. Respondent's use of the Domain Name does not constitute a bona fide or fair use because Respondent adopted a Domain Name that is confusingly similar to the ADM Mark, used a Complainant employee's name within YouTube videos to promote a fraudulent investment application, and created the associated <m.adm-fortune.com> subdomain that blatantly copies the ADM Mark, photo of a sign at a physical location, favicon, and colorway.

By utilizing the ADM Mark and name within the Domain Name and elsewhere, Respondent is clearly attempting to mislead the public into believing they are coming across an application or login page for an investment application that is legitimately associated with Complainant. Moreover, by Respondent using Complainant's name, address, and phone number, to register the Domain Name, this further establishes its bad faith intent to target and appear as Complainant, and perpetuate its fraudulent scheme. Respondent has not used the Domain Name to date and has allowed it to remain inactive, but the registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated party can create a presumption of bad faith. Furthermore, the use of the Domain Name for illegal activity, such as impersonation and fraud, also constitutes bad faith. Respondent not only registered the Domain Name using Complainant's name, address, and phone number, but it has gone so far as to create a subdomain associated with the Domain Name which displays the fraudulent use of Complainant's intellectual property to impersonate ADM and has promoted a fraudulent investment application through YouTube videos.

Respondent registered the Domain Name in bad faith as well. Given the worldwide fame of the ADM Mark and the company itself, and Respondent's use of ADM's Mark and employee name, Respondent was certainly aware of Complainant's rights in the ADM Mark and company name when registering the Domain Name and has attempted to trade off that goodwill by defrauding the public into believing there is a legitimate association with ADM.

## **B. Respondent**

Respondent did not reply to 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 here between Complainant's ADM Mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 ADM Mark is reproduced 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.

Although the addition of other terms, here "fortune", 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 Domain Name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 Respondent may demonstrate rights or legitimate interests in the Domain Name.

Although the overall burden of proof in UDRP proceedings is on 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 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted 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.

Complainant has not licensed, consented to, or otherwise authorized Respondent to use the ADM Mark. Moreover, it has not provided any indication that it is, or has ever been, affiliated with Respondent. While Respondent has apparently adopted Complainant’s trademarked acronym as part of its name (ADM, ADM), likely in an attempt to fraudulently legitimize the registration of the Domain Name, the evidence shows that Respondent has used the Domain Name fraudulently (i.e., YouTube channels using information belonging Complainant’s employees, a sub-domain requesting personally identifiable information from unsuspecting Internet users) which can never confer rights or legitimate interests upon a respondent.

Panels have held that the use of a domain name for illegal activity, such fraudulent activities are described above, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Complainant was founded back in 1902 and it now does business in 200 countries, owns more than 800 facilities worldwide, and employs over 38,000 people. Complainant adopted and has been using the ADM Mark in the United States since at least 1923 – about 100 years before Respondent registered the Domain Name that is confusingly similar to the ADM Mark. From these circumstances alone, the Panel could conclude that Respondent was likely aware of Complainant and its rights in the ADM Mark when registering the Domain Name. But Respondent’s specific activities in registering and thereafter using the ADM Mark make clear that Respondent registered the Domain Name in bad faith. These activities include: (1) registering a Domain Name incorporating Complainant’s well-known ADM Mark and combining it with the term “fortune” which, given ADM’s international presence in the financial services markets, suggests to consumers that the Domain Name belongs to, or is in some way associated with Complainant; (2) registering the Domain Name that is the same as Complainant’s domain name <adm.com> simply adding the descriptive term “fortune”; (3) creating a subdomain (<m.adm-fortune.com>) of the Domain Name and displaying on that website a photo of a building sign from outside one of Complainant’s physical locations that is displaying one of Complainant’s trademarks (a composite mark that includes the ADM Mark and a leaf design), along with the same composite mark prominently displayed at the

top of the website page; (4) using the leaf design portion of Complainant's mark in its favicon like Complainant uses the leaf design in the favicon for its main website; (5) displaying text on the website in Complainant's dark blue and green colorway; (6) promoting a fraudulent investment application on a YouTube channel by displaying the ADM Mark and the Domain Name; (7) using the name of one of Complainant's employees in the videos promoting the fraudulent investment application; and (8) using Complainant's trademarked acronym and portions of its physical address, as well as a phone number associated with Complainant, to register the Domain Name.

Panels have held that the use of a domain name for illegal activity, here the fraudulent activity described above, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

The Panel finds that 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 Domain Name <adm-fortune.com> be transferred to Complainant.

*/Harrie R. Samaras/*

**Harrie R. Samaras**

Sole Panelist

Date: March 1, 2024