

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Flavio Travano
Case No. D2022-0690

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 Flavio Travano, United States.

2. The Domain Name and Registrar

The disputed domain name <adm-onmicrosoft.com> (the “Disputed Domain Name”) is registered with Squarespace Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2022. On March 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on March 3, 2022, 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 March 7, 2022.

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 March 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 7, 2022.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on April 21, 2022. 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 states that it “has an international presence in various industries, including in the global agricultural commodity and processing industry”; that it “was founded in 1902 and is now an international, multi-billion-dollar company with over 30,000 employees serving more than 140 countries around the world”; that it “over 30,000 employees serving more than 140 countries around the world”; and that “it is a market leader in various business areas with global revenues of over \$64 billion in 2020”. Complainant also states that it “maintains an extensive presence online through its main website, ADM.COM”.

Complainant further states, and provides documentation in support thereof, that it owns “numerous” worldwide trademark registrations for ADM (the “ADM Trademark”), which was “adopted and has been continuously used in the United States since at least as early as 1923 in connection with numerous products and services”. These registrations include U.S. Reg. No. 1,386,430 (first used in commerce in 1923 and registered on March 18, 1986).

The Disputed Domain Name was created on February 9, 2022. According to Complainant, and documentation provided by Complainant in support thereof, Respondent has used the Disputed Domain Name to “pose[] as an ADM employee [...] and target[] funds from a third-party company” by “using the domain to steal credentials from companies that are being targeted by the malicious action while using ADM’s branding and name”.

5. Parties’ Contentions

A. Complainant

Complainant contends, in relevant part, as follows:

- The Disputed Domain Name is confusingly similar to the ADM Trademark because the Disputed Domain Name “completely incorporates the ADM Mark, and the ADM letters of the ADM-ONMICROSOFT.COM domain is clearly the most prominent portion of the domain”.
- Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “Respondent is not and has never been commonly known, either as a business, an individual, or an organization, by the name ADM-ONMICROSOFT.COM”; “Respondent is attempting to mislead consumers, collect information, and to tarnish the trademark or service mark at issue”; and “ADM has not licensed or permitted Respondent to use its ADM Mark or to register the ADM-ONMICROSOFT.COM domain name”.
- The Disputed Domain Name was registered and is being used in bad faith because, *inter alia*, “Respondent is using the ADM Mark and name in the ADM-ONMICROSOFT.COM domain to spoof ADM employee emails to communicate with third parties and mislead said targets to believing that ADM has sent a secured message”, which indicates that “Respondent was certainly aware of ADM’s rights in the ADM Mark prior to registering the ADM-ONMICROSOFT.COM and any other related sub-domain or email address” and “Respondent is clearly fraudulently and intentionally attempting to attract, for commercial gain, those engaged with ADM through the ADM-ONMICROSOFT.COM domain by creating a likelihood of confusion with ADM’s famous ADM Mark as to the source, sponsorship, affiliation, or endorsement of the domain”.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Pursuant to the Policy, Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested: (i) the Disputed 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 Disputed Domain Name; and (iii) the Disputed Domain Name has been registered and is being used in bad faith. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the ADM Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the ADM Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (*i.e.*, "adm-onmicrosoft") because "[t]he applicable Top-Level Domain ('TLD') in a domain name (*i.e.*, '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

As set forth in section 1.7 of [WIPO Overview 3.0](#): "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

Interestingly, the Disputed Domain Name contains a well-known trademark owned by a third party, MICROSOFT, to which Complainant does not claim any rights. However, as set forth in section 1.12 of [WIPO Overview 3.0](#):

"Where the complainant's trademark is recognizable within the disputed domain name, the addition of other third-party marks (*i.e.*, <mark1+mark2.tld>), is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element.

The complaint may include evidence of the third-party mark holder's consent to file the case, and request that any transfer order be issued in favor of the filing complainant only. Absent such consent (and, where this was considered appropriate, having failed to reach the concerned third party by Procedural Order via the complainant), some panels have ordered transfer of the domain name without prejudice to the concerned third-party's rights. In certain highly exceptional circumstances, panels have ordered the cancellation of the disputed domain name."

In this case, therefore, inclusion of the MICROSOFT trademark in the Disputed Domain Name does nothing to alleviate confusing similarity between the Disputed Domain Name and the ADM Trademark. However, because Complainant has not included consent from the owner of the MICROSOFT trademark, the Panel's order below shall be without prejudice to any third-party's rights with respect to the Disputed Domain Name.

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

B. Rights or Legitimate Interests

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “Respondent is not and has never been commonly known, either as a business, an individual, or an organization, by the name ADM-ONMICROSOFT.COM”; “Respondent is attempting to mislead consumers, collect information, and to tarnish the trademark or service mark at issue”; and “ADM has not licensed or permitted Respondent to use its ADM Mark or to register the ADM-ONMICROSOFT.COM domain name”.

[WIPO Overview 3.0](#), section 2.1, states: “[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its *prima facie* case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location. Policy, paragraph 4(b).

As set forth in section 3.4 of [WIPO Overview 3.0](#), “the use of a domain name for per se illegitimate activity such as [...] phishing can never confer rights or legitimate interests on a respondent” and “is manifestly considered evidence of bad faith”. Further, numerous panels under the Policy have found bad faith under circumstances similar to those here, including at least one case filed by Complainant also relating to the ADM Trademark. See, e.g., *Archer-Daniels-Midland Company v. WhoisGuard Protected, WhoisGuard, Inc. / Todd Peter*, WIPO Case No. [D2020-2222](#) (finding bad faith where Complainant alleged that “[f]raudulent emails regarding non-existent job opportunities at the Complainant’s Canadian subsidiary were sent from an email address incorporating the disputed domain name” and “the website has been flagged as a suspected phishing site”).

Accordingly, the Panel finds that Complainant has proven 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-onmicrosoft.com> be transferred to Complainant, without prejudice to any third-party's rights with respect to the Disputed Domain Name, for the reasons set forth above.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: May 2, 2022