

## **ADMINISTRATIVE PANEL DECISION**

Archer-Daniels-Midland Company v. chen ming hao  
Case No. D2022-4927

### **1. The Parties**

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

The Respondent is Chen Ming Hao, China.

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

The disputed domain name <admhks55.top> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 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 the Complainant on December 27, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 4, 2023.

On December 27, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 3, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondent did not submit

any response. Accordingly, the Center notified the Respondent's default on January 25, 2023. On January 4, 2023, the Center received the Complainant's request that the two cases [D2022-4927](#) and [D2022-4928](#) be consolidated.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on January 31, 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**

The Complainant is a multinational company headquartered in the USA and its main activities include printing and publishing; fuel production, including bioethanol and biodiesel; logistics services (agricultural storage and transportation services) and research and development services. The Complainant 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, including the Respondent's jurisdiction China.

The Complainant provides evidence that it owns a large international portfolio of trademark registrations for the mark ADM. Examples of such registrations include USA trademark registration number 1386430, registered on March 18, 1986, claiming first use in commerce in 1923; and Chinese trademark registration number 64125535, registered on October 28, 2022. The Complainant also has an extensive portfolio of domain name registrations, including its main domain name <adm.com>. The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is November 15, 2022.

The Complainant submits evidence that the disputed domain name directed to an active website, prominently displaying the Complainant's trademark and requesting the insertion of a verification code providing further access to the website. However, on the date of this Decision, the Panel notes that the disputed domain name directs to an inactive webpage.

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

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

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for ADM, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are intensively used and are globally famous in a variety of industries and sectors in which the Complainant is active, and provides printouts of its official website and of its marketing and related materials. The Complainant also refers to a number of previous decisions by panels under the Policy which have recognized the Complainant's rights in its ADM trademarks and the widespread fame of such trademarks, including *Archer-Daniels-Midland Company v. Steve Co. / Stave Co. Ltd*, WIPO Case No. [D2017-2110](#); and *Archer-Daniels-Midland Company v. Warren Flaherty, Allwood Design and Manufacture Ltd / Identity Protect Limited*, WIPO Case No. [D2015-0539](#). Moreover, the Complainant provides evidence that the disputed domain name was linked to an active website, displaying the Complainant's figurative trademark and requesting the insertion of a verification code providing further access to the website. In this context, the Complainant essentially claims that the Respondent is attempting to mislead the public to believe that the disputed domain name is affiliated with ADM or to tarnish the trademark or service mark at issue. The Complainant also contends that the Respondent is using the ADM trademark name and logo solely to commit fraud, indicating its intentional attempt to create a likelihood of confusion with ADM's famous ADM Mark and trade off the goodwill associated with its ADM mark. The

Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 First Preliminary Issue: Consolidation of Administrative Proceedings D2022-4927 and D2022-4928**

The Complainant requests the consolidation of administrative proceedings [D2022-4927](#) and [D2022-4928](#). In this regard, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") states in section 4.12.2: "[r]equests for addition of domain names to a complaint after it has been notified to the respondent and the proceedings have formally commenced would be addressed by the panel on appointment. Except in limited cases where there is clear evidence of respondent gaming/attempts to frustrate the proceedings (e.g., by the respondent's registration of additional domain names subsequent to complaint notification), panels are generally reluctant to accept such requests because the addition of further domain names would delay the proceedings (which are expected to take place with due expedition). Moreover, a panel declining such request would not prevent the filing of a separate complaint where such additional domain names may be addressed. In those cases where panels would grant such a request, the complainant would need to hold relevant trademark rights and the proposed additional domain names would need to be *prima facie* registered by the same or related respondent. Moreover, in the event a panel would grant such a request, it may also order partial or full re-notification of the proceeding (which may impact case timelines)."

The Panel considers that the decision as to whether to allow the addition of further domain names must be made in accordance with paragraph 10 of the Policy. In particular the Panel must ensure that its decision respects the procedural rights of both of the Parties (paragraph 10(b)), and is compatible with the Panel's obligation to ensure the administrative proceeding takes place with due expedition (paragraph 10(c)), taking also into account the need to provide partial or full re-notification of the proceeding upon consolidation (which may impact case timelines) in some cases (see also prior decision *Department of Management Services, State of Florida v. Digi Real Estate Foundation*, WIPO Case No. [D2007-0547](#)).

In the Panel's view, the position most consistent with paragraph 10 of the Policy and with the principles of the UDRP system, is generally not to permit the addition of new domain names to a pending proceeding under the Policy after it has been notified to the Respondent (see [WIPO Overview 3.0](#), section 4.12.2).

In this regard, the Panel notes that, in this case, the Complainant's request for consolidation was made on January 4, 2023, which is also the date on which the Complaint was formally notified to the Respondent and on which the proceeding formally commenced.

Moreover, the Complainant did not submit any evidence that the Respondent would be trying to game or frustrate the proceedings. Additionally, the Panel has also considered the fact that the same Panel has been appointed by the Center on the same date in both administrative procedures for which consolidation is requested, and that there are therefore neither any clear procedural advantages to consolidation, nor any risks of conflicting decisions which could potentially justify a consolidation. Based on the elements above, the Panel will proceed rendering separate decisions in each case.

## 6.2 Second Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters; and, finally, the fact that Chinese as the language of proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

## 6.3 Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid and sufficient rights in its marks for ADM, based on its use and registration of the same as trademarks in several jurisdictions, as stated above.

Further, as to confusing similarity of the disputed domain name with the Complainant's ADM marks, the Panel finds that the disputed domain name consists of the combination of two elements, namely the Complainant's ADM trademark followed by the term "HKS55". According to the [WIPO Overview 3.0](#), section 1.7, "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" (see also *Wal-Mart Stores, Inc. v. Richard McLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The Panel concludes that the disputed domain name contains the entirety of the Complainant's trademark for ADM, which remains easily recognizable in spite of the addition of the term "HKS55", and is therefore confusingly similar to the Complainant's ADM marks. The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (".top" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

## **B. Rights or Legitimate Interests**

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Further, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to misleadingly pass it off as the website of the Complainant by prominently displaying the ADM mark. Moreover, the Panel also accepts the Complainant's argument that such website posed a risk of fraud or phishing by requesting the insertion of a verification code leading to further access to the website, which may lead unsuspecting Internet users to share sensitive information with the Respondent. It is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) and, given the abovementioned facts, the Panel concludes that the Respondent's use does not constitute legitimate noncommercial use or fair use of the disputed domain name. However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollere SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

The Panel accepts that the Complainant and its ADM marks are internationally famous, see also prior decisions under the Policy in this sense including *Archer-Daniels-Midland Company v. Steve Co. / Stave Co. Ltd*, WIPO Case No. [D2017-2110](#); and *Archer-Daniels-Midland Company v. Warren Flaherty, Allwood Design and Manufacture Ltd / Identity Protect Limited*, WIPO Case No. [D2015-0539](#). Given this fame and the registration of the Complainant's marks many years before the registration date of the disputed domain name, the Panel finds that the subsequent registration of the disputed domain name clearly and consciously targeted the Complainant's prior registered trademarks for ADM. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew of the existence of the Complainant's trademarks at the time of registering the disputed domain name. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to misleadingly pass it off as the website of the Complainant by prominently displaying the ADM mark. Moreover, the Panel also accepts the Complainant's argument that such website posed a risk of fraud or phishing by requesting the insertion of a verification code leading to further access to the website, which may lead unsuspecting Internet users to share sensitive information with the Respondent. The Panel concludes

from these facts that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor (with the term “competitor” being understood in a broad sense) or to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s marks. This constitutes direct evidence of the Respondent’s bad faith under paragraph 4(b)(iii) and (iv) of the Policy. However, on the date of this decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.” The Panel has reviewed all elements of this case, and attributes particular relevance to the following elements: the fact that the disputed domain name contains the entirety of the Complainant’s trademark, the high degree of fame and intensive use of the Complainant’s trademarks, the clear targeting of the Complainant’s trademark with the previous use, and the unlikelihood of any good faith use to which the disputed domain name might be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent constitutes use of the disputed domain name in bad faith. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement under 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 <admhks55.top> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: February 14, 2023