

## **ADMINISTRATIVE PANEL DECISION**

Archer-Daniels-Midland Company v. Privacy service provided by Withheld for Privacy ehf/ Venture Aviation  
Case No. DCO2022-0037

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf/ Venture Aviation, United States.

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

The disputed domain name <archerdaniels.co> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 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 May 9, 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 amendment to the Complaint on May 9, 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 the Respondent of the Complaint, and the proceedings commenced on May 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on June 10, 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**

Originally founded as a food and ingredients company, the Complainant's 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. It owns the trademark ADM, which it has registered in many countries, including the United States (Reg. No. 1,386,430, registered on March 18, 1986).

According to the Whois records, the disputed domain name was registered on April 3, 2022. There is no active website at the disputed domain name but the Complainant has provided evidence that the disputed domain name has been used to send one or more fraudulent email messages that were crafted to appear as if they came from one of the Complainant's executives.

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the 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. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ADM mark by providing evidence of its trademark registrations. Though the Complainant asserts it has been in business since 1902, it provides little information regarding the ability and strength of the words "Archer-Daniels-Midland" to serve as a source identifier for the Complainant's products services. Nonetheless, in light of the longstanding existence of the Complainant, the magnitude of its operations (30,000 employees in more than 140 countries), its sales revenue (global revenues of over USD 64 billion in 2020), and the common knowledge of the name Archer-Daniels-Midland Company in the marketplace, the Panel finds that

the Complainant has rights in such name as a source identifier of its products and services.

The Complainant asks the Panel to find that the disputed domain name is confusingly similar to the ADM mark; the Panel also notes the source-identifying capacity of the Archer-Daniels-Midland Company name. The test for confusing similarity typically involves a side-by-side comparison of a domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Several other panels have found that a domain name containing a form of the Complainant's corporate name is confusingly similar to the Complainant's ADM mark. See *Archer-Daniels-Midland Company v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Buccaneer Josh, .buccaneer computer systems*, WIPO Case No. [D2021-3577](#); *Archer-Daniels-Midland Company v. Ada Ben Collins*, WIPO Case No. [D2022-0833](#); and, *Archer-Daniels-Midland Company v. Registration Private, Domains By Proxy, LLC / Chantelle Columbus*, WIPO Case No. [D2022-1656](#) (finding that ADM is recognizable as the initialism for the full corporate name Archer-Daniels-Midland Company and is commonly recognizable as such).

In any event, the Panel finds – especially given the broader case context, namely the fraudulent emails specifically designed to confuse users based on the Complainant's name and mark – that the disputed domain name is confusingly similar to the Complainant's corporate name, Archer-Daniels-Midland Company, which as explained above functions as a mark. The use of the disputed domain name to send fraudulent email impersonating the Complainant and its executive shows that the Respondent sought to trade off the reputation of the Complainant, thereby supporting a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.7.

The Panel finds the Complainant has satisfied this first UDRP element.

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

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant).

On this point, the Complainant asserts, among other things, that: (1) the Respondent is not and has never been commonly known, either as a business, an individual, or an organization, by the disputed domain name, (2) any claimed rights or legitimate interests in the disputed domain name are negated by the Respondent's impersonation the Complainant's executive and attempt to profit off of the Complainant's reputation and goodwill, presumably with the intent of diverting funds intended for ADM to itself, (3) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain, but instead is attempting to misleadingly divert consumers or to tarnish the trademark or service mark at issue, (4) the Respondent does not use nor has it made preparations to use the disputed domain name with a *bona fide* offering of goods or services, and (5) the Complainant has not licensed or permitted the Respondent to use its marks or to register the disputed domain name.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's

bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [the respondent’s] website or location”.

Because the Complainant and its marks are well-known, it is implausible to believe that the Respondent was not aware of those marks when it registered the disputed domain name. Moreover the use to which the disputed domain name has been put, fraudulent emails, removes any such doubt. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name. Bad faith use is clear from the Respondent’s activities of using the disputed domain name to send fraudulent email. For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

## **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 <archerdaniels.co> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: June 24, 2022