

## **ADMINISTRATIVE PANEL DECISION**

Chicago Mercantile Exchange Inc., and CME Group Inc. v. Theresa Chavedw, and Qikun Guo  
Case No. D2023-0122

### **1. The Parties**

Complainants are Chicago Mercantile Exchange Inc. (“Complainant 1”), and CME Group Inc. (“Complainant 2”), United States of America (“US”), represented by Norvell IP llc, US.

Respondents are Theresa Chavedw, US (“Respondent 1”), and Qikun Guo, China (“Respondent 2”).

### **2. The Domain Names and Registrars**

The disputed domain name <cmegrouper.com> is registered with MAFF Inc. (the “First Registrar”); The disputed domain name <cmegroupkofe.net> is registered with NameSilo, LLC (the “Second Registrar”). Collectively, the “Registrars”.

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2023. On January 11, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 11, 2023, the Second Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name <cmegroupkofe.net> which differed from the named Respondent (See PrivacyGuardian.org) and contact information in the Complaint. On January 12, 2023, the First Registrar transmitted by email to the Center its verification response confirming that Respondent 2 is listed as the registrant for the disputed domain name <cmegrouper.com> and providing the contact details. The Center sent an email communication to Complainants on January 13, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint in English on January 16, 2023.

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 Respondents of the Complaint, and the proceedings commenced on January 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2023. Respondents did not submit any response. Accordingly, the Center notified Respondents' default on February 10, 2023.


On February 15, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 17, 2023, Complainants submitted a request that English be the language of the proceeding. Respondents did not comment on the language of the proceeding.

The Center appointed Yijun Tian as the sole panelist in this matter on February 24, 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**

##### **A. Complainants**

Complainant 1 is Chicago Mercantile Exchange Inc. ("CME") incorporated in Chicago, Illinois, US. Founded in 1898, it is one of the world's leading financial institutions. It began using the CME name in 1919. For over one hundred years, traders, financial institutions, investors, corporations and governments have come to rely upon and trust Complainant 1 for their financial and risk management services (Annex D to the Complaint). Complainant 2 is CME Group Inc. also incorporated in Chicago, Illinois, US. It is the world's largest and most diverse financial exchange and was formed in 2007 after Complainant 1 and the Chicago Board of Trade merged. Complainant 2 currently offers futures and options in all major asset classes, such as metals, commodities, foreign exchange, energy, and other products through four exchanges: CME or Chicago Mercantile Exchange Inc., CBOT or Chicago Board of Trade, COMEX or Commodity Exchange, and NYMEX or New York Mercantile Exchange. Complainant 1 is owned by Complainant 2. As such they are related corporate entities. Complainants' operations now extend globally with offices in the US, Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong, China, the Republic of Korea, India, and Japan (Annex E to the Complaint).

Complainant 1 is the owner of numerous CME and CME GROUP trademarks worldwide, including the US Trademark CME registered on February 14, 1978 (the US Trademark registration number 1085681), the US Trademark CME GROUP registered on January 15, 2008 (the US Trademark registration number 3367684), the Chinese Trademark CME registered on December 7, 2007 (the Chinese Trademark registration number 4162022), and the Chinese Trademark CME GROUP registered on September 28, 2018 (the Chinese Trademark registration number 16668026). Complainant 1 is also the owner of the design mark , including the US Trademark registration number 4369249 registered on July 16, 2013. Complainants also own more than 200 domain names that include the CME marks (Annex G to the Complaint).

##### **B. Respondents**

Respondent 1 is Theresa Chavedw, US. Respondent 2 is Qikun Guo, China. The disputed domain name <cmegrouper.com> was registered by Qikun Guo on August 3, 2022. The disputed domain name <cmegroupkofe.net> was registered by Theresa Chavedw on February 18, 2022.

Both of the disputed domain names currently resolve to inactive websites. But according to the information provided by Complainants, the disputed domain name <cmegrouper.com> redirected to the website at the disputed domain name <cmegroupkofe.net> that prominently featured Complainants' design mark at the top of the page against the same view of a blue background with bitcoin themed imagery, with the tagline "The world's leading digital asset trading platform".

## 5. Parties' Contentions

### A. Complainants

Complainants contend that the disputed domain names fully incorporate the CME marks, and are thus confusingly similar to Complainants' strong, registered CME marks. The only difference between the disputed domain names and Complainants' CME GROUP marks are the use of additional characters "kofe" and "er", which follow the CME GROUP marks in each of the disputed domain names. Respondents' use of these add-on letters in the disputed domain names does not avoid confusion with Complainants' CME GROUP marks and their domain names <cme.com> and <cmegroup.com>.

Complainants contend that Respondents have no rights or legitimate interests in the disputed domain names.

Complainants contend that the disputed domain names were registered and are being used in bad faith.

Complainants request that the disputed domain names be transferred to it.

### B. Respondents

Respondents did not reply to Complainants' contentions.

## 6. Discussion and Findings

### 6.1. Consolidation of Multiple Respondents

The Panel notes that the present Complaint has been filed against multiple Respondents and Complainants have submitted a request for consolidation. On this subject, section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides *inter alia* as follows:

"The WIPO Center may accept, on a preliminary basis, a consolidated complaint where the criteria described below are *prima facie* met. Any final determination on consolidation would be made by the appointed panel, which may apply its discretion in certain circumstances to order the separation of a filed complaint."

The Panel finds that Complainants have provided sufficient evidence to establish that the disputed domain names or corresponding websites are subject to common control, for the following reasons:

- a) the disputed domain name <cmegrouper.com> redirected to the website at the disputed domain name <cmegroupkofe.net> that featured Complainants' design mark at the top of the page against the view of a blue background with bitcoin themed imagery, with the tagline "The world's leading digital asset trading platform".
- b) the disputed domain names are hosted by the same hosting provider using the same IP address located in Tokyo, Japan.
- c) the disputed domain names have been registered in a similar naming pattern, *i.e.*, incorporating Complainants' well-known CME and CME GROUP marks in their entirety with additional letters;
- d) there are commonalities in the disclosed registrant information where both Respondents provide a "[... ]@163.com" email address;
- e) Respondents did not object to Complainants' request for consolidation.

In all of these circumstances, the Panel considers that it is procedurally efficient to allow Complainants to proceed with the single Complaint as filed and is satisfied that such consolidation is fair and equitable to all of the Parties.

## 6.2. Language of the Proceeding

The language of the Registration Agreements for the disputed domain name <cmegrouper.com> is Chinese, and for <cmegroupkofe.net> is English. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainants and Respondents to the effect that the language of the proceeding should be English. Complainants filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) To the best of Complainants' knowledge, based on the registrar and registrant information available at the time of this filing, the Second Registrar provides its domain name registration agreement in English. Complainants were unable to locate a copy of the First Registrar's registration agreement.
- (b) Respondents have created an infringing and fraudulent website at the disputed domain name <cmegroupkofe.net> that displays all of its content in English. The disputed domain name <cmegrouper.com> is set up to redirect to the English website resolved by the disputed domain name <cemgroupkofe.net>.
- (c) Respondent 2 will not be prejudiced if the proceeding is conducted in English when Registrant 2 has chosen to use the English language to perpetuate the fraudulent website.

Respondents did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the [WIPO Overview 3.0](#) further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show

that it would not be unfair to proceed in a language other than that of the registration agreement.” (See also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent 2 is located in China and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) all of the disputed domain names include Latin characters rather than Chinese scripts; (b) the disputed domain names previously resolved to websites in English rather than in Chinese; and (c) the Center informed the Parties of the language of the proceeding in English and Chinese, but no comment from Respondents was received.

Accordingly, the Panel finds that the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

### **6.3. Substantive Issues**

Paragraph 4(a) of the Policy requires that Complainants must prove each of the following three elements to obtain an order that the disputed domain names should be cancelled or transferred:

- (i) the disputed domain names registered by Respondents are identical or confusingly similar to a trademark or service mark in which Complainants have rights; and
- (ii) Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

On the basis of the evidence introduced by Complainants and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

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

The Panel finds that Complainants have rights in the CME and CME GROUP marks acquired through registration and use. The CME marks have been registered in the US since 1978 and in China since 2007. The CME GROUP marks have been registered in the US since 2008 and in China since 2018.

The Panel finds that all of the disputed domain names <cmegrouper.com> and <cmegroupkofe.net> comprise the CME and CME GROUP marks in their entirety. They only differ from Complainants’ CME GROUP trademark by the additional letters “er” or “kofe” and the generic Top-Level Domain (“gTLD”) “.com” or “.net”. These do not compromise the recognizability of Complainants’ marks within the disputed domain names, nor prevent a finding of confusing similarity between Complainants’ registered trademarks and the disputed domain names (*Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: “The applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel, therefore, holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondents have rights or legitimate interests in the disputed domain names:

- (i) before any notice to Respondents of the dispute, the use by Respondents of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) Respondents have been commonly known by the disputed domain names, even if Respondents have acquired no trademark or service mark rights; or
- (iii) Respondents are making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainants' trademarks.

The overall burden of proof on this element rests with the complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1, and cases cited therein).

Complainants have rights in the CME marks in the US since 1978 and in China since 2007, and have rights in the CME GROUP marks in the US since 2008 and in China since 2018, which all precede Respondents' registrations of the disputed domain names (2022). According to the Complaint, Complainants are one of the world's leading financial institutions, and began using the CME name in 1919. Complainants' CME and CME GROUP branded products and services have been distributed worldwide. Complainants' operations now extend globally with offices in the US, Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong, China, the Republic of Korea, India, and Japan.

Complainants assert that they have not authorized Respondents to use their CME or CME GROUP marks, and Respondents are not licensees of Complainants. Complainants have therefore established a *prima facie* case that Respondents have no rights or legitimate interests in the disputed domain names and thereby shifted the burden to Respondents to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondents have no rights or legitimate interests in the disputed domain names:

- (a) There has been no evidence adduced to show that Respondents are using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondents have not provided evidence of legitimate use of the disputed domain names or reasons to justify the choice of the term "cme" or "cme group" in the disputed domain names. There has been no evidence to show that Complainants have licensed or otherwise permitted Respondents to use the CME or CME GROUP marks or to apply for or use any domain names incorporating the CME or CME GROUP marks;
- (b) There has been no evidence adduced to show that Respondents have been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondents have any registered trademark rights with respect to the disputed domain names. Respondents registered the disputed domain names in 2022, long after the CME and CME GROUP marks became internationally known. The disputed domain names confusingly similar to Complainants' CME and CME GROUP marks; and
- (c) There has been no evidence adduced to show that Respondents are making a legitimate noncommercial or fair use of the disputed domain names. By contrast, as mentioned above, according to the information provided by Complainants, the disputed domain name <cmegrouper.com> redirected to the website at the disputed domain name <cmegroupkofe.net> that

prominently featured Complainants' design mark at the top of the page against the view of a blue background with bitcoin themed imagery, with the tagline "The world's leading digital asset trading platform".

The Panel finds that Respondents have failed to produce any evidence to rebut Complainants' *prima facie* case. The Panel, therefore, holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain names in bad faith, namely:

- (i) circumstances indicating that Respondents have registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the domain name registrations to Complainants who are the owner of the trademark or service mark or to a competitor of Complainants, for valuable consideration in excess of Respondents' documented out-of-pocket costs directly related to the disputed domain names; or
- (ii) Respondents have registered the disputed domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondents have engaged in a pattern of such conduct; or
- (iii) Respondents have registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain names, Respondents have intentionally attempted to attract, for commercial gain, Internet users to Respondents' websites or other online location, by creating a likelihood of confusion with Complainants' mark as to the source, sponsorship, affiliation, or endorsement of Respondents' websites or location or of a product or service on the websites or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondents have registered and used the disputed domain names in bad faith.

#### **(a) Registration in Bad Faith**

The Panel finds that Complainants have a widespread reputation in the CME and CME GROUP marks with regard to its products or services. Complainants have registered its CME marks in the US since 1978 and in China since 2007. They have registered the CME GROUP marks in the US since 2008 and in China since 2018. As introduced above, Complainants are one of the world's leading financial institutions and began using the CME name in 1919. Complainants' CME and CME GROUP branded products and services have been distributed worldwide. Complainants' operations now extend globally with offices in the US, Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong, China, the Republic of Korea, India, and Japan.

All of the disputed domain names were registered in 2022 well after Complainants' trademark registrations in the US and China. It is not conceivable that Respondents would not have had actual notice of Complainants' trademark rights at the time of the registration of the disputed domain names.

Moreover, Respondents have chosen not to respond to Complainants' allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, *supra*, "the failure of Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain names were registered in bad faith.

(b) Use in Bad Faith

As introduced above, the disputed domain name <cmegrouper.com> redirected to the website at the disputed domain name <cmegroupkofe.net> that prominently features Complainants' design mark at the top of the page against the view of a blue background with bitcoin themed imagery, with the tagline "The world's leading digital asset trading platform". Thus, the Panel concludes that Respondents are using the confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondents' websites.

Given the reputation of the CME and CME GROUP marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain names have a connection with Complainants, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the websites to which the disputed domain names resolved. In other words, Respondents have through the use of the confusingly similar disputed domain names created a likelihood of confusion with the CME and CME GROUP marks.

The Panel, therefore, concludes that the disputed domain names were registered and are being used by Respondents in bad faith. Such use of the disputed domain names is also disruptive in relation to the interests of Complainants.

In summary, Respondents, by choosing to register and use the disputed domain names, which are confusingly similar to the CME and CME GROUP marks, intended to ride on the goodwill of these trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainants. In the absence of evidence to the contrary and rebuttal from Respondents, the choice of the disputed domain names and the conducts of Respondents as far as the websites to which the disputed domain names resolved are indicative of registration and use of the disputed domain names in bad faith. The current non-use of the disputed domain names would not change the Panel's finding of Respondents' bad faith.

The Panel, therefore, holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## 7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <cmegrouper.com> and <cmegroupkofe.net> be transferred to Complainants.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: March 18, 2023