

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. steve bourne, flograss inc
Case No. D2023-3388

1. The Parties

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

Respondent is steve bourne, flograss inc, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <adm-m.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2023. On August 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 10, 2023, 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 (unknown, Privacy Protect LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on August 10, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On the same date, Complainant filed a simple amendment to the Complaint.

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 August 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 4, 2023.

The Center appointed Richard W. Page as the sole panelist (the “Panel”) in this matter on September 8, 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

Complainant is widely known by its initials as “ADM.” Founded in 1902, ADM now serves 200 countries, owns more than 800 facilities worldwide, employs over 38,000 people, and has become one of the world’s premier agribusinesses. In 2022, the worldwide net sales of ADM were USD 101 billion.

ADM has numerous worldwide trademark registrations of its ADM Mark, covering a wide range of goods and services, including in the United States. The ADM Mark 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. Today the ADM Mark is widely recognizable due to the international nature of ADM’s businesses, as well as, the online presence ADM maintains. ADM owns numerous trademark registrations for the ADM Mark in the United States for a wide range of good and services. Since 1986, ADM registration No. 1386430 has been registered in the United States for the following goods and services, without limitation, with a first use date at least as early as 1923: Class 01: chemicals for individual use, namely, ethyl alcohol; ground corn cobs for use in further manufacture; and – Class 04: industrial oils for use in chemicals and paints made from cottonseeds, sunflower seeds, soybeans, flaxseeds, corn germ and fish.

The Disputed Domain Name was registered on April 28, 2023.

5. Parties’ Contentions

A. Complainant

Complainant contends that, due to its promotion and continued global use of its name and brands, ADM has built up international goodwill and reliability in the ADM Mark among its consumers, wherein the ADM Mark is now well-known and famous.

Complainant further contends that ADM maintains its global presence online, via its various websites, including its main website at “www.adm.com”. The website describes the history of ADM and ADM’s vast array of products and services and provides consumers with the latest news on ADM. The “www.adm.com” website and domain name are an integral part of ADM’s business as it allows consumers and business associates from around the world to learn about and communicate with ADM. Moreover, the “www.adm.com” website allows ADM’s customers to conduct business with ADM from anywhere in the world. ADM places a high priority on safeguarding the security and trust of its worldwide consumers to uphold its global reputation of strong goodwill and reliability. Although ADM was originally a food and ingredients company, its areas also 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 asserts that, subsequent to registration of the Disputed Domain Name, Respondent created multiple email addresses of ADM’s account receivable and billing departments, “...@adm.com”. At the time of filing the Complaint, there is no active website to which the Disputed Domain Name resolves. Complainant received a copy of communications which occurred in French, between Respondent and its targeted customer. The communications were sent by the targeted customer and translated into English via an independent service.

Complainant further asserts that, under the guise of ADM’s accounts receivable and billing representatives, Respondent communicated with one of ADM’s trusted customers regarding an invoice that was pending payment. Respondent, purportedly acting on behalf of ADM, advised the customer that the banking details originally provided on the invoice were “no longer active” and to instead make payment to an “updated” bank

account. ADM's bank details, as shown on the invoice, were still active and ADM had not provided any instructions regarding invoice payment to be redirected to any other bank account.

Complainant further asserts that to deceive the unsuspecting recipient and convey legitimacy of the conversation, Respondent included ADM's trademarked logo in the signature block of his email. Respondent engaged in an illicit scheme to receive payment from ADM's customers by impersonating ADM representatives and falsely representing that ADM's banking details were no longer active, in order to redirect payment to Respondent's own bank account.

Complainant further asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name. Complainant further alleges that Respondent has not been commonly known by ADM or the full name of the Disputed Domain Name. Complainant further alleges that the website to which the Disputed Domain Name resolves has remained inactive, thus Respondent did not use or make preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Rather Respondent has only used the Disputed Domain Name to send fraudulent emails while impersonating ADM representatives, demonstrating Respondent's malicious intent to deceive and mislead those receiving the emails, and redirect invoice payments from those customers to their own bank account.

Complainant alleges that Respondent's fraudulent actions clearly demonstrate Respondent's explicit intent to deceive unsuspecting individuals and exploit the established reputation and credibility of ADM's global and online presence in furtherance of his illicit schemes, thereby establishing Respondent's bad faith in registering and using the Disputed Domain Name.

Complainant further alleges that Respondent has fraudulently impersonated representatives of ADM's accounts receivable and billing departments and further deceived ADM's customers into believing they were communicating with a real ADM agent, demonstrating Respondent's fraud and bad faith. Complainant further alleges that Respondent is using the ADM Mark, name, and robust global online presence in bad faith via the Disputed Domain Name and the associated fraudulent email addresses.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met.

See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the ADM Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that it has rights in the ADM Mark. Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence for purposes of standing to file a UDRP case.

Complainant contends that it has numerous worldwide trademark registrations of its ADM Mark, covering a wide range of goods and services, including in the United States. Since 1986, ADM Registration No. 1386430 has been registered in the United States.

Therefore, the Panel finds that, for purposes of this proceeding, Complainant has enforceable rights in the ADM Mark.

Complainant further contends that the Disputed Domain Name is confusingly similar to the ADM Mark, pursuant to paragraph 4(a)(i) of the Policy.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that generic Top-Level-Domains (“gTLDs”) such as “.com” may be disregarded for purposes of assessing confusing similarity.

The Panel notes that the entirety of the ADM Mark is included in the Disputed Domain Name. The addition of the “-m” does not prevent a finding of confusing similarity.

Therefore, the Panel finds that Complainant has shown the elements of confusing similarity, under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating he has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the ADM Mark.

Complainant asserts in detail that Respondent created fraudulent email addresses in an attempt to divert payments from ADM customers to Respondent and that such activity is not *bona fide* or legitimate. Complainant further asserts that Respondent is not commonly known by the Disputed Domain Name.

The Panel finds that Complainant has stated a *prima facie* case that Respondent lack rights and legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy. Respondent has not contested these assertions.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant alleges that Respondent registered and is using the Disputed Domain Name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the ADM Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the ADM Mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the ADM Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on Respondent's website or location.

The four criteria set forth in paragraph 4(b) of the Policy are nonexclusive. In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

The Panel finds that the actions of Respondent are a fraudulent attempt to steal payments from ADM clients. Such activity is in bad faith. The Panel finds that the disputed domain name was registered and is being used in bad faith.

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-m.com>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: September 22, 2023