

## **ADMINISTRATIVE PANEL DECISION**

Deerland Probiotics & Enzymes, Inc. and Archer-Daniels-Midland Company  
v. Alon Garay Garay  
Case No. D2022-3928

### **1. The Parties**

Complainants are Deerland Probiotics & Enzymes, Inc. and Archer-Daniels-Midland Company, both of United States of America (“United States”), represented by Innis Law Group LLC, United States.

Respondent is Alon Garay Garay, United States.

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

The disputed domain name <deerland.com> (the “Domain Name”) is registered with Realtime Register B.V. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2022. On October 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainants on the same day, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amendment to the Complaint on October 24, 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 23, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on November 25, 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**

Complainants are Archer Daniels-Midland Company (“ADM”) and Deerland Probiotics & Enzymes, Inc. (“Deerland”), the latter of which is a wholly owned subsidiary of ADM and the owner of DEERLAND trademark registrations and the operator of the domain name <deerland.com>. ADM is the parent company of Deerland and the registrant of the domain name <deerland.com>. Deerland, founded in 1990, operates internationally in various industries, including manufacturing of dietary supplements and probiotics for use in foods, beverages, and nutritional supplements. It has a global revenue of over 111 million dollars in 2021.

ADM operates globally across over 140 countries in various industries, including the agricultural commodity and processing industry, printing and publishing; financial and business management services; fuel production; logistics services and research and development services.

Deerland owns registered trademarks throughout the world, including, for example:

- United States registered trademark number 5811552 for DEERLAND, registered on July 23, 2019;
- Australian registered trademark number 2052299 for DEERLAND registered on May 24, 2019;
- International registered trademark 1498963 for DEERLAND, registered on May 24, 2019; and
- New Zealand registered trademark number 1135037, registered on March 24, 2020.

The Domain Name was registered on September 2, 2022 and reverts to an inactive parked page. The Domain Name has been used for sending fraudulent emails.

#### **5. Parties’ Contentions**

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

Complainants contend that (i) the Domain Name is identical and confusingly similar to Complainants’ trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainants contend that they have trademark registrations for DEERLAND and own domain names incorporating the DEERLAND trademarks. Complainants contend that Respondent registered and is using the Domain Name for the primary purpose of attempting to harvest personal information for profit, to mislead unsuspecting individuals interested in Deerland goods or services, and to egregiously conduct a scheme designed to confuse, mislead, and harm victims.

Complainants note that they have no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainants’ trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainants contend that Respondent has acted in bad faith in acquiring and setting up the Domain Name for fraudulent purposes, when Respondent clearly knew of Complainants’ rights.

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

Respondent did not reply to Complainants’ contentions.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainants must satisfy to the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainants to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainants provided evidence of its rights in the DEERLAND trademarks, as noted above. Complainants have also submitted evidence which supports that the DEERLAND trademarks are widely known and a distinctive identifier of Complainants’ products and services. Complainants have therefore proven that it has the requisite rights in the DEERLAND trademarks.

With Complainants’ rights in the DEERLAND trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case, “.com”), is identical or confusingly similar to Complainants’ trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainants’ DEERLAND trademark. This trademark is recognizable in the Domain Name. The addition of the letter “r” does not prevent a finding of confusing similarity between Complainants’ trademark and the Domain Name.

Thus, the Panel finds that Complainants have satisfied the first element of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainants and the DEERLAND trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainants have confirmed that Respondent is not affiliated with Complainants, or otherwise authorized or licensed to use the DEERLAND trademarks or to seek registration of any domain name incorporating the

trademarks. Respondent is also not known to be associated with the DEERLAND trademarks. Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The Domain Name resolves to an error or inactive page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Further, the evidence shows that the Domain Name has been used for sending fraudulent emails. UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the nature of the Domain Name comprising Complainants' trademark and the additional letter "r" between "r" and "l" in the Domain Name indicates an awareness of Complainants.

Accordingly, Complainants have provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainants have met their burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel finds that Complainants provided ample evidence to show that registration and use of the DEERLAND trademarks predate the registration of the Domain Name. Complainants are also well established and known. Indeed, the record shows that Complainants' DEERLAND trademarks and related services are widely known and recognized. Therefore, and also noting the composition of the Domain Name itself which is an intentional misspelling of Complainants' DEERLAND trademarks and domain name <deerland.com>, Respondent was likely aware of the DEERLAND trademarks when he registered the

Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainants' trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainants' trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainants' DEERLAND trademark with the addition of the letter "r" between "r" and "l" in the Domain Name suggests Respondent's actual knowledge of Complainants' rights in the DEERLAND trademark at the time of registration of the Domain Name and his effort to opportunistically capitalize on the registration and use of the Domain Name. Complainants also own the domain name <deerland.com>.

In addition, although the Domain Name currently resolves to an in active or error page, the evidence shows that it has been used for sending fraudulent emails. Given that the use of a domain name for *per se* illegitimate activity such as phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Moreover, from the inception of the UDRP, panels have also found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

In the present circumstances, including the reputation of the DEERLAND trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the inherently misleading Domain Name may be put, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainants succeed under the third element of paragraph 4(a) 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 Domain Name <deerrland.com> be transferred to Complainant Archer-Daniels-Midland Company.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: December 8, 2022