

## **ADMINISTRATIVE PANEL DECISION**

Chicago Mercantile Exchange Inc. and CME Group Inc. v. Gay Burns  
Case No. D2023-2063

### **1. The Parties**

Complainants are Chicago Mercantile Exchange Inc., United States of America ("U.S.") and CME Group Inc., U.S., represented by Norvell IP llc, U.S.

Respondent is Gay Burns, U.S.

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

The Disputed Domain Name <cmegroups.org> 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 9, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (John Doe/ Redacted for Privacy, Privacy service provided by Withheld ehf) and contact information in the Complaint.

The Center sent an email communication to Complainant on May 12, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 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 Respondent of the Complaint, and the proceedings commenced on May 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 7, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on June 9, 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 Chicago Mercantile Exchange Inc. is one of the world's leading financial institutions, and part of CME Group Inc. (collectively "Complainants"). Originally founded in 1898, Complainants 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 Complainants for their financial and risk manages services. Complainants are the owners of numerous registered trademarks including "CME" (the "CME Marks").

Complainant CME Group is one of the world's largest and most diverse financial exchange and was formed in 2007, after Complainant CME and the Chicago Board of Trade merged. Now, Complainant CME Group 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, CBOT or Chicago Board of Trade, COMEX or Commodity Exchange, and NYMEX or New York Mercantile Exchange.

Complainants' operations now extend globally with offices in the U.S., Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong (China), Republic of Korea, India and Japan.

Complainants also maintain strong relationships with international financial centers. For example, Complainants have strategic relationships with BM&FBOVESPA in Brazil, Bursa Malaysia Derivatives Blend in Malaysia, China Financial Futures Exchange, Dubai Mercantile Exchange in the United Arab Emirates, Johannesburg Stock Exchange in South Africa, Korea Exchange in Republic of Korea, MexDer in Mexico, Multi Commodity Exchange of India Ltd. and National Stock Exchange of India Ltd. in India, Osaka Securities Exchange in Japan, Moscow Exchange, and Singapore Exchange Limited in Singapore.

Complainants also maintain an active Internet presence and maintain Internet websites at domain names incorporating the CME Marks. The domain name <cme.com> was originally registered in 1994 and is still active, redirecting users to CME Groups' primary homepage at "www.cmegroup.com" ("CME Website") which has been owned by Complainants since 2007. Information about Complainants can be found at "www.cmegroup.com/company". Complainants own more than 200 domain names that include the CME Marks.

The CME Website serves as a primary marketing tool for Complainants and as a primary point of communication between Complainants and their customers. For example, customers rely upon the CME Website to obtain key information and access to Complainants' trading systems and applications.

Complainant owns multiple U.S. Trademark applications and registrations for the CME Marks. Complainant CME has apparently used the CME Marks since at least as early as 1919. These registrations include, without limitation, U.S. Registration No. 1,085,681 for CME registered on February 14, 1978), and U.S. Registration No. 3,367,684 for CME GROUPS, registered on January 15, 2008.

In addition, Complainants own registrations for CME Marks in multiple foreign jurisdictions, including but not limited to, Australia, Brazil, Canada, China, the European Union, Hong Kong (China), India, Japan, Mexico, Singapore and the United Kingdom.

These marks were filed or registered before the registration of the Disputed Domain Name, on February 13, 2023.

According to the evidence submitted by the Complainant, the Disputed Domain Name was used to send fraudulent emails.

## 5. Parties' Contentions

### A. Complainants

Complainants assert that the CME Marks are distinctive, famous and widely recognized around the world. Accordingly, they are entitled to a broad scope of protection.

Complainants further contend that the Disputed Domain Name fully incorporates, and is thus confusingly similar to, the CME Marks. The only difference between the Disputed Domain Name and the CME Marks are the addition of the letter "s" and the use of the gTLD ".org".

Complainants assert that Respondent lacks rights and legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Complainants further assert that Respondent has not used, and is not using or preparing to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The Disputed Domain Name is designed to deceive customers, creating the false impression that Respondent's services and communications are associated with Complainants. Respondent is intentionally creating this false association and confusion by using the CME Marks in the Disputed Domain Name and by using the Disputed Domain Name to lure Complainants' customers into providing their identifying information to Respondent under false pretenses.

Complainants further assert that there is no evidence that Respondent has been commonly known by the Disputed Domain Name or that he has any rights that might predate those of Complainants.

Complainants further assert that there can be no legitimate or fair use when there is no legitimate connection between Respondent's use of the Disputed Domain Name and the CME Marks.

Complainants further assert that the success of Complainants' financial, educational, clearing, and related services is due, in part, to the extensive promotion and advertising they have undertaken for the CME Marks. As a result, the CME Marks have come to be associated by members of the relevant consuming public worldwide with goods and services of only the highest quality. In short, the CME Marks are assets of immeasurable value. The goodwill symbolized by the CME Marks in connection with financial related products and services belong exclusively to Complainants.

Complainants further assert that Respondent's website was simply a redirect to the CME website and that this website has been used to email communications with Respondent holding themselves out to be affiliated with CME, facilitated through the Disputed Domain Name in a fraudulent scheme.

Complainants further assert that Respondent chose to register and use the Disputed Domain Name which fully incorporates the CME Marks without authorization from Complainants, in bad faith and with disregard to Complainant' rights, and with the intent to cause consumer confusion as to the source, sponsorship or affiliation with Complainants' services.

Complainants further assert that Respondent first registered and used the Disputed Domain Name to effectuate its fraudulent scheme. Then, Respondent created a webpage that automatically redirected to the legitimate, CME-sanctioned website. Due to Respondent's use of the CME Marks in the Disputed Domain Name and in email communications in furtherance of the scheme, Complainants' customers were tricked into navigating Respondent's website under the impression they were doing so in a legitimate manner with services connected to Complainants, when in fact, they were not.

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

Complainants further allege that Respondent knew of Complainants' rights in the CME Marks when it/he

registered the Disputed Domain Name, Respondent registered the Disputed Domain Name as part of a fraudulent scheme, Respondent registered and is using the Disputed Domain Name for commercial gain by intentionally creating a likelihood of confusion with the CME Marks as to the source, sponsorship, affiliation, or endorsement of Respondent's webpages, and Respondent's continued ownership of the Disputed Domain Name presents an abusive threat hang over Complainants.

Complainants further allege that Respondent knew of Complainants' rights in the CME Marks prior to the registration of the Disputed Domain Name. Specifically, Complainants registered the CME Marks in jurisdictions across the globe, well before Respondent registered the Disputed Domain Name. Registration of a well-known trademark as a domain name is a clear indication of bad faith in itself, even without considering other elements. Respondent's acting to mimic the CME website in its Disputed Domain Name website reveals that Respondent knew of the CME Marks and the fame of the name before registering the Disputed Domain Name.

Complainants further allege that in light of the well-known character of the CME Marks – especially in the field of financial services – it is obvious that Respondent was aware of the CME Marks. Therefore, it is appropriate for this Panel to conclude that Respondent engaged in opportunistic bad faith.

Complainants further allege that Respondent intentionally registered and used the Disputed Domain Name for commercial gain, to attract Internet users into believing the Disputed Domain Name was legitimately coming from Complainants or Complainants' CME Website, when it was not. Thus, creating confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. Respondent uses the CME Marks in the Disputed Domain Name to conduct a fraudulent scheme in an attempt to lure Complainants' customers to interact and provide sensitive personal and financial information only to find out later they are providing this information to Respondent. Simply put, Respondent registered and is using the Disputed Domain Name to deceive the public, and this is a clear case of bad faith.

## **B. Respondent**

Respondent did not reply to Complainants' 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 Complainants' assertions, the Panel will review the evidence proffered by Complainants 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 the Complainants must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the CME Marks in which Complainants have 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**

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration is *prima facie* evidence of Complainants have enforceable rights in the CME Marks.

Complainants have identified their registrations of the CME Marks and Respondent has not contested these registrations. Therefore, the Panel finds that, for purposes of this proceeding, Complainants have enforceable rights in the CME Marks.

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 gTLDs such as (.org) may be disregarded for purposes of assessing confusing similarity.

Complainants contend that the Disputed Domain Name fully incorporates, and is thus confusingly similar to, the CME Marks. In particular, the only difference between the Disputed Domain Name and the CME GROUP marks are the addition of the letter “s” and the use of the gTLD “.org”.

The Panel finds that the Disputed Domain Name is confusingly similar to the CME Marks, pursuant to paragraph 4(a)(i) of the Policy.

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

Complainants assert that Respondent lacks rights and 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 Complainants make 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, Complainants are 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 a legitimate interest 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 CME Marks.

Complainants assert that Respondent has not used, and is not using or preparing to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The Disputed Domain Name was registered to deceive customers, creating the false impression that Respondent’s communications are associated with Complainants. Respondent is intentionally creating this false Complainants further assert that there is no evidence that Respondent has been commonly known by the Disputed Domain Name or that he has any rights that might predate those of Complainants.

Complainants further assert that there can be no legitimate or fair use when there is no legitimate connection between Respondent’s use of the Disputed Domain Name, and the CME Marks and where Respondent creates a false impression of association and confusion by using the CME Marks in the Disputed Domain Name, and by using the Disputed Domain Name to lure Complainants’ customers by email, into providing their identifying information to Respondent under false pretenses.

Panels have categorically held that the use of a domain name for illegal activity (e.g., phishing) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#) section 2.13.

The Panel finds that Complainants have presented a *prima facie* case that Respondent lacks rights and legitimate interests in the Disputed Domain Name and that Respondent has not contested this *prima facie* case.

Therefore, the Panel finds that Complainants have met the requirements of paragraph 4(a)(ii) of the Policy.

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

Complainants contend that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainants 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 Complainants who are the owners of the CME Marks or to a competitor of Complainants, 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 the owner of the CME Marks from reflecting the marks 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 CME Marks 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. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

Complainants allege that Respondent knew of Complainants' rights in the CME Marks prior to the registration of the Disputed Domain Name. Specifically, Complainants registered the CME Marks in various jurisdictions across the globe, well before Respondent registered the Disputed Domain Name. Registration of a well-known trademark as a domain name is a clear indication of bad faith in itself

Complainants further allege that in light of the well-known character of the CME Marks – especially in the field of financial services – it is obvious that Respondent was aware of the CME Marks. This is further confirmed when taking into consideration that the Disputed Domain Name is clearly confusingly similar to the CME and CME GROUPS marks. Therefore, it is appropriate for this Panel to conclude that Respondent engaged in opportunistic bad faith.

Complainants further allege that Respondent intentionally registered and used the Disputed Domain Name for commercial gain, to attract Internet users into believing the Disputed Domain Name was legitimately coming from Complainants or Complainants' CME Website, when it was not. Thus, creating confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. Respondent uses the CME Marks in the Disputed Domain Name to conduct a fraudulent email scheme in an attempt to lure Complainants' customers to provide sensitive personal and financial information. Simply put, Respondent registered and is using the Disputed Domain Name to deceive the public, and this is a clear case of bad faith.

The Panel finds that Complainants have shown the elements of paragraph 4(b)(iv) of the Policy, together with the additional elements of constructive knowledge of Complainants' preexisting rights ([WIPO Overview 3.0](#) section 3.2.2) and perpetration of a fraudulent phishing scheme.

Therefore, Complainants have satisfied the requirements of paragraph 4(a)(iii) 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 Disputed Domain Name, <cmegroups.org>, be transferred to Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: June 23, 2023