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Archer-Daniels-Midland Company, USA vs Anup Singh Mahrar, India
INDRP Case no. 1806
 Arbitrator: Mr. P.K.Agrawal

1 | Page

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AWARD

1. The Parties

The Complainant is Archer-Daniels-Midland Company, A Delaware Corporation, 4666, Faries Parkway, Decatur, Illinois 62526, USA.

The Respondent is Anup Singh Mahrar, Mahrar Digital Solutions, 359/3/1 G.T Road, Salkia, Howrah, West Bengal 711106, India.

2. The Domain Name and Registrar

The disputed domain name is <adm-groups.in>. The said domain name is registered with the Registrar – Endurance Digital Domain Technology LLP (IANA ID: 801217). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D8EB9FD1E18144038B5DE1A1F0666B548-IN
- b. Date of creation: Oct 15, 2023.
- c. Expiry date: Oct 15, 2024.

3. Procedural History

- (a) A Complaint dated 15.12.2023 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 11.1.2024 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures

to the parties through email on 11.1.2024. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 11.1.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. According to the Complainant's emails dated 12.1.2024 and 18.1.2024, the Complaint with annexures was sent to the Respondent through email on 12.1.2024 and DTDC Courier on 12.1.2024. The Complainant has submitted courier online tracking details in his email dated 18.1.2024 and requested that the courier delivery person made two attempts to deliver the package on 16th January and 17th January, 2024. However, the delivery could not be completed as the recipient was stated to have shifted from the given address. In the above scenario, since the Complainant has already successfully delivered a complete set of the complaint and its exhibits to the Respondent by email, he has humbly requested to consider the service of the complaint as complete and to proceed to the next stage of the proceeding. Acceding to his request which is just & reasonable, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent has not responded to the Notice. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant in this arbitration proceedings is Archer-Daniels-Midland Company, A Delaware Corporation, 4666, Faries Parkway, Decatur, Illinois 62526, USA.

The Complainant is a Fortune 500 conglomerate headquartered in Decatur, Illinois and employs more than 38,000 people worldwide. The Complainant serves 200 countries with 50+ innovation centres, 345+ food and feed processing locations, 480+ crop procurement locations, etc., and connects crops to markets on six continents. The Complainant started its operations way back in the year 1902, when two entrepreneurs by the names of George A. Archer and John W. Daniels began a linseed crushing business. In 1923, Archer-Daniels Linseed Company acquired Midland Linseed Products Company, and the Archer- Daniels-Midland Company was formed. The trade mark

ADM was coined in the year 1923 as an abbreviation of Archer Daniels & Midland. The first letters in the trademark are initial alphabets of the two founders. The Complainant is one of the largest agricultural processors in the world engaging in the business of manufacturing, transporting, storing, processing, marketing, and promoting a wide variety of agricultural, consumer, and industrial products and services. The Complainant uses the ADM mark in connection with a wide variety of agricultural, consumer, and industrial products and services, including but not limited to, barges, vans, trucks, and railway cars, and transportation services.




Although ADM was originally a food and ingredients company, its 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. For example, ADM provides financial services through ADM Investor Services, Inc. ("ADMIS") and its many branches throughout the world.

The Complainant's products bearing the mark ADM are available in several countries of the world. The ADM mark has become the source identifier of its products/ services. The Complainant owns registrations for the mark ADM in a spectrum of classes of goods and services in several countries of the world like Argentina, Australia, Canada, China, Ecuador, Egypt, India, Israel, Japan, Mexico, New Zealand, Norway, Russian Federation, Singapore, Switzerland, Taiwan, Turkey, USA, etc. In the financial services and business management sectors, ADM owns numerous worldwide registrations for the ADM mark for "information services in the field of employment rendered by means of a global computer information network," in Class 35, among other financial services in Classes 36, 40, and 42, as well as "financial and investment services, namely, providing financial information on the internet; financial clearing house services; financial research; brokerage house services in the field of stocks, commodities and futures; financial advisory and consulting services; trading in securities, options, commodities and futures; providing online financial services in the nature of stock, bond and mutual fund investing via a global computer network" in Class 36, among other goods and services in Classes 16, 35, and 42.

The Complainant's ADM branded products are available in India since at least as early as 2009. The Complainant markets range of ADM food ingredients to leading food manufacturers, provide animal nutrition products to poultry and dairy farmers, originate and trade corn and wheat, offer cargo services and warehousing facilities for businesses; and operate

a training and incentive program to assist Indian farmers to improve crop quality and increase yields. In India, the Complainant is operating under the trading names, ADM AgroIndustries India Private Limited, ADM Agro Industries Kota & Akola Private Limited and ADM Agro Industries Latur & Vizag Private Limited with headquarters in Gurgaon. In India, Complainant's principal business is the processing of oilseeds into edible oils, animal feeds, and feed ingredients. The Complainant employs nearly 1200 people in India.

The Complainant is the registered proprietor of the mark ADM in respect of various goods and services in India, the details of which are as follows:

Trade Mark	Registration No.	Registration date	Class
ADM	2223777	21-Oct-2011	1
ADM	2223755	21-Oct-2011	4
ADM	2223779	21-Oct-2011	5
	2223754	21-Oct-2011	12
ADM	2223756	21-Oct-2011	16
ADM	2223757	21-Oct-2011	29
ADM	2223758	21-Oct-2011	30
	2223775	21-Oct-2011	30
ADM	2223759	21-Oct-2011	31
	2223776	21-Oct-2011	35
ADM	2223780	21-Oct-2011	36
ADM	2223760	21-Oct-2011	39
ADM	2223761	21-Oct-2011	42
ADM	2223762	21-Oct-2011	42

In addition to strictly enforcing its trademark rights in its ADM Mark, the Complainant also aggressively prosecutes attempts to use its intellectual property to commit cyber fraud, and closely monitors infringing domains. It has successfully brought multiple similar complaints under the Uniform Domain-Name Dispute-Resolution Policy ("UDRP") complaints and .In Domain Name Dispute Resolution

Policy (INDRP) in recent years. In the multitude of UDRP and INDRP proceedings, the Panel has ruled in Complainant's favor in similar scenarios ordering fraudulent registrants to transfer their domains to Complainant.

Respondent's Identity and Activities

The Complainant claims that ADM registered its top-level domain ADM.COM in 1994, approximately 29 years before the fraudulent ADM-GROUPS.IN domain was registered. The Complainant has noticed that the fraudulent website www.adm-groups.in was being used for a fraudulent investment mobile app using the ADM mark and found roughly 20 YouTube videos associated with the www.adm-groups.in domain that were promoting the fraudulent investment mobile app. These YouTube videos claimed that upon purchasing certain investment plans, the purchaser would be given a daily income in return. The YouTube videos demonstrated to viewers how to navigate the mobile app and the widely known and registered ADM marks were prominently displayed throughout the videos. Upon becoming aware of these fraudulent videos, Complainant filed the requisite Trademark and Counterfeit complaints on YouTube, and the videos have since been removed. Within a majority of these videos, the www.adm-groups.in domain was being promoted and the videos included referral links in the descriptions of the videos for the same domain. This domain was advertised together with the fraudulent use of the ADM marks within the YouTube videos, indicating that the Complainant was affiliated with the domain, which it is not and never has been.

The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

According to the Complainant:

- a. The Respondent completely incorporated the famous ADM mark into its fraudulent domain name for the sole purpose of deceiving

website visitors into believing there is an association with Complainant. It is clear from the manner in which the disputed domain was advertised in YouTube videos fraudulently displaying the ADM mark and logos that the Respondent was intentionally trying to pass off its domain as affiliated with Complainant, therefore attempting to create a likelihood of confusion as to the source of the domain. The ADM-GROUPS.IN domain is visually confusingly similar to the ADM Mark because it wholly incorporates the trademark of the Complainant.

- b. In the past, multiple INDRP complaint decisions have held that when a disputed domain name wholly incorporates a trademark of a complainant, then the mere addition of the .IN domain code does not distinguish the domain from the mark. Please see: Nike Inc. v. Nike Innovative CV Zhaxia (Case No. INDRP/804); Metropolitan Trading Company v. Chandan Chandan (Case No. INDRP/811); Lego Juris A/s v. Robert Martin (Case No. INDRP/125). Additionally, in Archer-Daniels-Midland Company v. Jim Zhu, WIPO Case No. D2013-0258, the respondent registered the disputed domain, ADMAPGROUP.COM, the Panel held that the respondent's inclusion of the generic terms "AP GROUP" after ADM did nothing to dispel the confusing similarity of the disputed domain name with the ADM mark, and further, that it was simply evocative of typo squatting. The Complainant has successfully taken enforcement actions against multiple similar fraudulent domains which incorporated the ADM mark with a generic or arbitrary word, in which the panels found the domains to be confusingly similar and were registered in bad faith. Please see: Archer-Daniels-Midland Company v. Lori Comb, WIPO Case D2023-2206 (Panel found the inclusion of "FR" in the domain ADMFR.COM did not avoid a finding of confusing similarity); Archer-Daniels-Midland Company v. Mo Ban Lin Shi, ChengDu Xi Wei Shu Ma Ke Ji You Xian Gong Si / Huang Xin, WIPO Case No. D2016-2068 (finding inclusion of "forex" in ADMFOREX.COM domain increased the confusing similarity between the domain and Complainant's ADM mark because it referred to the foreign exchange market and the Complainant specializes in forex trading); Archer-Daniels-Midland Company v. Warren Flaherty, Allwood Design and Manufacture Ltd / Identity Protect Limited, WIPO Case No. D2015-0539 (finding the addition of the ".solutions" gTLD in ADM.SOLUTIONS only served to reinforce the confusing similarity given ADM's activities and the generic meaning of the ".solutions" gTLD); Archer-Daniels-Midland Company v. Wang De Bing, WIPO Case No. D2017-0363

(finding that the addition of the gTLD suffix “.website” did not have the capacity to distinguish the disputed domain name from the Complainant’s ADM registered trademark and should be disregarded when comparing the disputed domain name with the Complainant’s trademark).

- c. The same determinations should be made in the present proceeding. The disputed domain prominently displays and wholly incorporates the ADM mark, and the addition of the generic word “-GROUPS” along with the common .IN domain code does nothing to distinguish the domain from Complainant’s ADM mark.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <adm-groups.in>.

The Complainant submits:

- a. The Respondent has no rights or legitimate interests in the ADM-GROUPS.IN domain name. Upon information and belief, Respondent has not been commonly known by the names ADM or ADM-GROUPS.IN at any time, and has never had any affiliation with ADM. Any possibly legitimate rights or interests in the domain name are negated by the manner in which this domain was advertised on YouTube videos that have since been removed from YouTube for their trademark infringement and counterfeiting goals. Respondent only registered the ADM-GROUPS.IN domain to indicate that it is affiliated with ADM.
- b. There is no demonstrable evidence at this time of the Respondent’s use of, or intent to use, the ADM-GROUPS.IN domain in connection with a bona fide offering of goods and/or services. Furthermore, upon information and belief, Respondent is not making a legitimate noncommercial or fair use of the domain name. The Respondent is not, and has never been, authorized by ADM to use the ADM mark, yet the ADM-GROUPS.IN domain indicates a legitimate association with ADM.
- c. As of the filing date of this complaint, the website associated with the ADM-GROUPS.IN domain remains active. In past UDRP disputes regarding Complainant’s prior enforcement efforts, the Panel has determined in Complainant’s favor that such schemes

were prima facie evidence of an absence of legitimate rights and interests regarding the disputed domain. Please see: Archer-Daniels-Midland Company v. Steve Co. / Stave Co. Ltd, WIPO Case No. D2017-2110 (finding complainant's assertions were sufficient to constitute a prima facie showing of an absence of rights or legitimate interests in respect of the disputed domain name where respondent was using ADM-COM.XYZ in a fraudulent phishing scheme); Archer-Daniels-Midland Company v. Name Redacted, WIPO Case No. D2016-1618 (finding no legitimate rights or interests in the disputed domain name where respondent was using ADMVVORLD.COM in a fraudulent phishing scheme and complainant provided a prima facie showing that the Respondent did not hold rights or legitimate interests in the domain).

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- a. Upon information and belief, the Respondent was using the ADM mark, ADM name, and extensive robust global online presence of ADM in bad faith via the ADM-GROUPS.IN domain and in association with the fraudulent YouTube videos that were prominently advertising the disputed domain.
- b. The Respondent clearly attempted to deceive possible website visitors based on similarities between the ADM.COM domain and the ADM trademark compared to the ADM-GROUPS.IN domain. While the ADM.COM domain has been registered since 1994, almost 29 years prior to ADM-GROUPS.IN, and Complainant has owned many trademark registrations for the ADM mark globally for many years. Due to the fact that Complainant has such a large and active global presence, and Respondent's use and infringement of the ADM logo and trademark on the disputed domain, the Respondent cannot conceivably claim it was unaware of Complainant's fame, rights, goodwill and interests in its ADM marks and domains. Similarly, ADM brought multiple UDRP proceedings against a string of related domains that were used for fraudulent activity via a similar fraudulent investment app. The disputed domains had prominently displayed the ADM mark on their homepage, misleading users to believe the websites and app

were associated with ADM. The Panel found that the respondents' demonstrated their clear and conscious intention to target ADM and mislead the public to believe the websites belonged to ADM. The Panel held that such practices were direct evidence of the respondents' bad faith. Please see: Archer-Daniels-Midland Company v. chen ming hao, Case No. D2022-4927; Archer-Daniels-Midland Company v. chen ming hao, Case No. D2022-4928; Archer-Daniels-Midland Company v. zheng zi qiang, Case No. D2022-4929; Archer-Daniels-Midland Company v. Mo Ban Lin Shi, Cheng Du Xi Wei Shu Ma Ke Ji You Xian Gong Si / Huang Xin, WIPO Case No. D2016-2068; Archer-Daniels-Midland Company v. Zhang Qiang, WIPO Case No. D2015-1758; Archer-Daniels-Midland Company v. Li Qiang Li, Li Qiang, WIPO Case No. D2016-1553.

- c. Per UDRP precedent, Respondent's mere registration of the ADM-GROUPS.IN domain is alone sufficient to make a finding of bad faith due to the fame of the ADM mark. Please see: Osram Sylvania, Inc. v. Jason Blevins, WIPO Case No. D2009-0233; Archer-Daniels-Midland Company v. Shao Xu Feng Shao Xu Feng, WIPO Case No. D2023-2280 (finding the respondent acted in bad faith where the respondent registered and used the disputed domain name for fraudulent purposes by deceiving and misleading the public to believe they are using a legitimate investment and trading service and mobile application associated with ADM, when in fact the investment and trading app appeared to be fraudulent and part of an illegal scheme).
- d. If allowed to maintain this domain, the Respondent is likely to continue use of the disputed domain to continue fraudulent activities.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the

basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <adm-groups.in> was registered by the Respondent on Oct 15, 2023.

The Complainant is an owner of the registered trademark ADM for the last many years. The Complainant is also the owner of the similar domain as referred to in the Complaint. This domain name and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <adm-groups.in adm-groups.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon’ble Supreme Court of India has in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, [2004Supp. (2) SCR 465] held that the domain name has acquired the characteristic of being a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for ADM products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that “When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <adm-groups.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by ADM or ADM-GROUPS.IN anywhere in the world. The name of the Registrant / Respondent is not ADM as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark ADM or to apply for or use the domain name incorporating said trademark / service mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or *bona fide* use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <adm-groups.in> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant has 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 the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by

the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <adm-groups.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 27th Jan, 2024