

ADMINISTRATIVE PANEL DECISION

Chicago Mercantile Exchange Inc. and CME Group Inc. v.
Domains By Proxy, LLC / Phupinder Gill
Case No. D2015-1842

1. The Parties

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

The Respondent is Domains By Proxy, LLC, of Scottsdale, Arizona, United States / Phupinder Gill of Houston, Texas, United States.¹

2. The Domain Name and Registrar

The disputed domain name <cmegrroup.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 15, 2015. On October 16, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 2015, 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 and contact information set forth in the Complaint. On October 22, 2015, the Center sent an email communication to the Complainants providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on October 27, 2015.

The Center verified that the Complaint together with the amended Complaint (collectively 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 the Respondent of the

¹ As the Complainants assert, the Panel notes that “Phupinder Gill” is the name of the Complainants’ CEO and may not reflect the true identity of the registrant of the disputed domain name.

Complaint, and the proceedings commenced on October 27, 2015. In accordance with the Rules, paragraph 5, the due date for Response was set as November 16, 2015. The Respondent did not submit any response. Accordingly, on November 17, 2015, the Center notified the parties of the Respondent's default.

On November 25, 2015, the Center appointed Peter L. Michaelson as the sole panelist in this matter. 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

As reflected in the registration record for the disputed domain name in the Whois database (a copy of the record appears in Annex A to the Complaint), the disputed domain name <cmegrroup.com> was registered on October 7, 2015 and is due to expire on October 7, 2016.

A. The Complainants' Marks

As indicated in the Complaint, the Complainants own various United States and foreign trademark registrations for the marks CME and CME GROUP in block letter and stylized forms, some of which include a design element. The Complainants have provided, in Annex F to the Complaint, copies of some of their US registration certificates for these marks, the details of which are as follows:

1. CME GROUP (stylized with a design element)
United States Registration No.: 4,544,078
Registered: June 3, 2014; filed: July 20, 2012

This mark is registered for use in connection with: "Computer software for use in financial trading, financial exchange, financial information and market, and financial clearing services; computer software for use in trading, clearing, confirmation, and financial trading risk management for exchange market transactions in the field of futures, options, swaps, and other derivative contracts; computer software for use in authenticating, facilitating, matching, processing, clearing, and submitting trade data, exchanging of trading transaction details, and management of the overall trading lifecycle; downloadable computer software for use in financial trading, financial exchange, financial information and market data, and financial clearing services; downloadable computer software for use in authenticating, facilitating, matching, processing, clearing, and submitting trade data, exchanging of trading transaction details, and management of the overall trading lifecycle", all in international class 9; "Financial exchange services; monetary exchange services; commodities exchange services; futures exchange services; financial information services; financial clearing services; providing exchange markets for trading, clearing, confirmation and financial trading risk management in the field of futures, options, swaps, and other derivatives contracts; conducting commodities, securities, monetary, and financial instrument exchange and clearing services; electronic financial trading services; electronic financial trading, namely, trading of commodities, stocks, futures, options, swaps, securities, equities and other derivative contracts; financial information provided by electronic means; providing on-demand and real-time financial information; financial services in the field of market data distribution, namely, market data reporting services and account management services; providing information in the field of financial stock, derivative, security and equity market data", all in international class 36; and "Providing temporary on-line use of non-downloadable software for use in trading, clearing, confirmation, and financial trading risk management for exchange market transactions in the field of futures, options, swaps, and other derivative contracts; platform as a service (paas) featuring computer software platform for authenticating, facilitating, matching, processing, clearing, and submitting trade data, exchanging of trading transaction details, and management of the overall trading lifecycle", all in international class 42. The registration indicates that both first use of the mark in conjunction with these goods and services and first use in commerce commenced as of May 31, 2010.

2. CME GROUP

United States Registration No.: 3,367,684

Registered: January 15, 2008; filed: October 17, 2006

This mark is registered for use in connection with: "Conducting commodities, securities, monetary and financial instruments exchange services" in international class 36. The registration indicates that both first use of the mark in conjunction with these services and first use in commerce commenced as of July 17, 2007.

3. CME

United States Registration No.: 3,084,640

Registered: April 25, 2006; filed: October 7, 2004

This mark is registered for use in connection with: "Computer hardware and software for use in providing financial exchange services" in international class 9, and "Providing temporary use of non-downloadable software for use in providing financial exchange services" in international class 42. The registration indicates that both first use of the mark in conjunction with these goods and services and first use in commerce commenced as of August 21, 2003.

4. CME

United States Registration No.: 1,085,681

Registered: February 14, 1978; filed: July 20, 1977

This mark is registered for use in connection with: "Conducting a security, mercantile, commodity and monetary exchange and providing services connected therewith" in international class 36. The registration indicates that both first use of the mark in conjunction with these services and first use in commerce commenced as of December 31, 1919.

B. The Parties and Their Activities

The Complainant CME Group is a large and diverse financial exchange dating back to 1848. It offers futures and options in various major asset classes, such as metals, commodities, foreign exchange, energy, and other products through four exchanges: Chicago Mercantile Exchange (CME), Chicago Board of Trade (CBOT), Commodity Exchange (COMEX), and New York Mercantile Exchange (NYMEX). CME Group is the parent company to Complainant CME and has been using the name CME GROUP since its formation in 2007.

CME is one of the world's large financial institutions. Originally founded in 1898, CME began using the mark CME in 1919. For more than one hundred years, traders, financial institutions, investors, corporations and governments have used and continue to use CME for their financial and risk management services. Various excerpts taken from the Complainants' website at <cmegroup.com> regarding the Complainant CME and its business activities appear in Annex C to the Complaint. CME's operations extend globally with offices in the US, Canada, Brazil, United Kingdom of Great Britain and Northern Ireland, Singapore, Hong Kong, China, Republic of Korea, India and Japan (as indicated by copies of further materials from the Complainants' website which appear in Annex D to the Complaint). In 2014, the Complainants and their related entities generated revenues in excess of USD 3.1 billion. During that year, more than 3.5 billion contracts were traded through the Complainants' exchanges with a notional value of over USD 1000 trillion. A copy of the Complainants' 2014 annual report appears in Annex C to the Complaint.

The Complainants annually expend millions of US dollars to promote and advertise the services provided under their Marks.

Recently, the Complainants learned of the registration of the disputed domain name which constitutes a misspelling of the Complainants' mark CME GROUP. While the Respondent does not currently maintain an active website resolvable through that name, the Respondent used the name as an address of an email account in an effort to impersonate both the Complainants and their chief executive officer (CEO). A hard-

copy printout of a fraudulent message containing this address which the Respondent directed on October 8, 2015 to the legitimate address for the Complainants' CEO appears in Annex I to the Complaint. The fraudulent message was sent as a phishing attempt to illicitly extract confidential personal information and contacts from CME and the Complainants' CEO.

On October 9, 2015, the Complainants, through their counsel, sent a cease and desist letter (a copy of which appears in Annex J to the Complaint) to the Respondent Domains by Proxy (at the time the Complainants did not know the true identity of the Respondent Registrant) demanding, *inter alia*, that it cease use of the disputed domain name and transfer it to the Complainants. The Complainants did not receive any response to the letter.

5. Parties' Contentions

A. Complainants

(i) Identical or Confusingly Similar

The Complainants contend that the disputed domain name is confusingly similar to their Marks.

Specifically, the disputed domain name contains an intentional misspelling of the Complainants' mark CME GROUP as "cmegrrou" (note the double "r"), as well as the Complainants' mark CME itself to which the misspelled word "grrou" has been appended. Either way, the misspelling is incapable of adding sufficient distinctiveness whatsoever to the disputed domain name to mitigate any resulting user confusion between that name and the Complainants' Marks.

Hence, the Complainants believe that they have satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

Specifically, the Respondent is not affiliated or connected with the Complainants and has never been licensed or authorized to use any of the Complainants' Marks or to register a domain name containing any of those Marks.

There is no indication that the Respondent has used or has made demonstrable preparations to use or even has any intention 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. In that regard, the only use which the Respondent has made of the disputed domain name is within an address of an email message designed, as part of a phishing attempt, to illicitly extract confidential personal information and contacts from the Complainants and their CEO. Such a use does not constitute a *bona fide* offering of goods or services.

Further, the Respondent is not commonly known by any of the Complainants' Marks nor could it be by virtue of the exclusive trademark rights residing in the Complainants – rights that existed well before the Respondent registered the disputed domain name.

Lastly, there is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. Perpetrating a fraud through use of the name, as the Respondent is doing, is clearly not such a use.

(iii) Registered and Used in Bad Faith

The Complainants also contend, for various reasons, that the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Specifically, the Respondent engaged in typosquatting which is *per se* bad faith. Given the reputation which the Complainants had established in their mark CME, which dates back nearly a century, prior to the date on which the Respondent registered the disputed domain name, the Respondent knew or should have known of the Complainants and their exclusive rights in the Marks prior to having registered the disputed domain name. In spite of that knowledge, the Respondent intentionally registered the disputed domain name containing a misspelled variant of the Complainants' mark CME GROUP with the express purpose of using that name, through email phishing, to illicitly extract, by deception, personal information and contact data from the Complainants and their CEO, which it then actually attempted to do. Using a domain name to undertake identity theft or other nefarious activities, such as phishing, constitutes bad faith use.

The Respondent also used a privacy shield to screen its identity and, by so doing, precluded the Complainants from determining whether the Respondent has engaged in a pattern of registering domain names to prevent their corresponding rights holder from reflecting any of its marks in a domain name and submitting evidence of that action.

B. Respondent

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainants' undisputed factual representations.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainants' Marks.

From a simple comparison of the disputed domain name to the Complainants' mark CME GROUP, no doubt exists that the disputed domain name is confusingly similar to it. The name consists of a misspelled variant of the mark to which the generic Top-Level Domain ("gTLD") ".com" has been appended, with the addition of the gTLD being irrelevant in this case in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, the Respondent's misspelling of the Complainants' mark CME GROUP as "cmegroup" clearly resulted in such a minor variation. See, e.g., *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC*

v. Creahq, Mike Furlong, WIPO Case No. D2008-0505; *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317; *SPX Corporation v. Hevun Diversified Corporation*, NAF Claim No. 791657; *Google Inc. v. Jennifer Burns*, NAF Claim No. 726096; *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766; *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531; *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411; *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824; *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836; *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491; and *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. D2002-1011.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainants' Marks. Hence, the Complainants have satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Respondent is not actively using the disputed domain name to resolve to an operational website and the record before this Panel does not reflect any demonstrable preparations to do so which the Respondent has made prior to receiving notice of this dispute. Furthermore, the Respondent's use of the disputed domain name as part of an email phishing scheme to illicitly obtain, by deception, confidential user information does not, in any manner, constitute a *bona fide* offering of goods or services. Accordingly, the Respondent's use of the disputed domain name does not qualify under paragraph 4(c)(i) of the Policy.

Further, the Complainants have never authorized the Respondent to utilize any of the Complainants' Marks nor do the Complainants have any relationship or association whatsoever with the Respondent.

The record before the Panel is simply devoid of any evidence which proves that the Respondent actually acquired any recognition in the marketplace to become commonly known by the disputed domain name or a name similar to it. Given the exclusive trademark rights that reside in the Complainants and the substantial reputation now inherent in their Marks, the Respondent could not legitimately acquire any public association between itself and the Complainants' Marks or even any mark similar thereto, at least for the goods and services provided by the Complainants under their marks. This is so in light of the Complainants' exclusive trademark rights which date back to 1919 in connection with the mark CME and the extensive reputation which that mark and the CME GROUP marks have long since acquired – which greatly predate the date, October 7, 2015, when the Respondent registered the disputed domain name. See, e.g., *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; *Cummins, Staatliche Porzellan-Manufaktur Meissen GmbH, Forideas, National Westminster, Tommy Bahama, Space Needle, Oakley, Burberry, HRB Innovations and MySpace*, all cited *supra*; and *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106. As such, the Respondent could not likely become commonly known by the disputed domain name or the Complainants' Marks for any of the goods and services which are either identical or sufficiently similar to those listed on the Complainants' trademark registrations or with which the Respondent uses its marks without infringing on the exclusive trademark rights of the Complainants. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

There can simply be no question that the Respondent was well aware of the Complainants, their Marks and the Complainants' exclusive rights in those Marks, and the reputation of those Marks when the Respondent registered the disputed domain name. Yet, in spite of that knowledge, the Respondent intentionally registered the disputed domain name as a vehicle to deceive users, as part of a phishing scheme, through which the Respondent deliberately caused confusion with those marks and, in so doing, attempted to deceive those users into believing they were transacting with the Complainants and, as such, would provide them with confidential user information.

Lastly, as the Respondent's illicit use of the disputed domain name clearly does not constitute either a noncommercial or fair use under paragraph 4(c)(iii) of the Policy.

As such, based on the evidence presently before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)-(iii) of the Policy. Also, there is simply no evidence that the Respondent has acquired, through any other means, any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

It is indisputable that the Respondent was well aware of the Complainants, their reputation, their CME and CME GROUP Marks and the exclusive rights which the Complainants had in those Marks when the Respondent registered the disputed domain name. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainants, the Respondent intentionally chose and registered the disputed domain name, which is a commonly misspelled variant of the mark CME GROUP, for its potential to cause confusion with those Marks. Relying on that confusion, the Respondent then used the disputed domain name as part of its email address in a phishing scheme designed to deliberately deceive Internet users into believing they were transacting with the Complainants when, in actuality, they were not and while, in the course of so doing, providing their confidential user information to the Respondent to their eventual detriment, likely resulting in some form of identity theft.

While the Respondent has not yet used the disputed domain name to resolve to an operational website, numerous prior UDRP cases have recognized the use of email address associated with the disputed domain name to perpetrate a fraudulent scheme constitutes use of the domain name in bad faith, even if the domain name does not resolve to an active website. See, *i.e.*, *F. Hoffmann-La Roche AG v. Registration Private, Domains By Proxy, LLC / Name Redacted / Name Redacted*, WIPO Case No. D2015-1623; *W.W. Grainger, Inc. v. Name Redacted*, WIPO Case No. D2015-1500.

It is clear to this Panel, given the inclusive nature of the Policy, that any use of a domain name, whether in conjunction with a website, an address used in an email system or any other instrumentality connected to the Internet, which employs that name as a component of an Internet address of a recipient (regardless of the specific nature of that recipient, *i.e.*, whether it is a server of any sort or other addressable device or process), for communicating with an Internet user will suffice as a "use" susceptible of inclusion within the ambit of this paragraph. Thus, the use of the disputed domain name by the Respondent, though apparently confined to an address of an email account implemented by the Respondent on a third-party email server (provided by Google), is sufficient to fall within the purview of this paragraph. As such, the Respondent's use of the name as part of its phishing scheme reflects bad faith under the general provisions of paragraph 4(a)(iii).

Thus, the Panel concludes that the Complainants have provided sufficient proof of their allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the

relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainants. The disputed domain name <cmegrroup.com> is to be transferred to the Complainants.

Peter L. Michaelson

Sole Panelist

Date: December 9, 2015