

ADMINISTRATIVE PANEL DECISION

Chicago Mercantile Exchange Inc. and CME Group Inc. v. JHAY JHAY Case No. D2023-0083

1. The Parties

The Complainants are Chicago Mercantile Exchange Inc. (“the Complainant CME”), and CME Group Inc. (“the Complainant CME Group”), United States of America (“United States”), represented by Norvell IP LLC, United States.

The Respondent is JHAY JHAY, United States.

2. The Domain Name and Registrar

The disputed domain name <crnegroups.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 9, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 10, 2023, 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 January 11, 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 the Respondent of the Complaint, and the proceedings commenced on January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on February 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

The Complainant CME is a Chicago-based financial institution, and is part of the Complainant CME Group. The Complainant CME was founded in 1898 and has been trading under the name and trademark CME since 1919 in respect of financial and risk management services. The Complainant CME Group is also based in Chicago and is a financial exchange formed in 2007 following the Complainant CME and Board of Trade of the City of Chicago, Inc. The Complainant CME Group offers futures and options in all major asset classes, including metals, commodities, foreign exchange, energy and other products through four different financial exchanges.

The Complainants have global operations with offices in the United States, Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong, China, the Republic of Korea, India and Japan. They also have strategic relationships with financial exchanges in other countries, including Malaysia, China, the United Arab Emirates, South Africa and Mexico.

Annexed to the Complaint were copies of *inter alia* the Complainant CME's United States trademark registrations 1,085,681 for CME in Class 36, registered on February 14, 1978, and 4,544,078 for CME GROUP in Classes 9, 36 and 42, registered on June 3, 2014.

The Complainants carry out their business under the trademarks CME and CME GROUP and own registrations for these marks including in the United States, Australia, Brazil, Canada, China, the European Union, Hong Kong, China, Japan, and the United Kingdom, which were filed for and registered before the Domain Name was registered on July 18, 2022.

The Complainants also maintain an active Internet presence at a website at "www.cmegroup.com", which has been owned by the Complainants since 2007.

The Domain Name was registered on July 18, 2022. It currently links to a holding page including links to various themes such as "Crypto Business", "Womens Mini Ugg Boots", "Compensation Analysis Software" and others. The Complainants were alerted to the registration of the Domain Name by their cyber-defense team, which the Complainants found that the Domain Name was used to set up an email account that was used to fraudulently impersonate the Complainant CME Group's employees in attempts to phish the Complainant CME Group's clients.

5. Parties' Contentions

A. Complainants

The Complainants submit that the Domain Name is confusingly similar to their earlier trademarks. The Domain Name includes the letter string "crnegroups" which the Complainants say is visually very close to CME GROUP and could be mistaken for it by Internet users.

The Complainants also submit that the Respondent has no rights or interests in the Domain Name. The Respondent has not been commonly known by the Domain Name, nor has it used or made demonstrable preparations to use it in connection with a *bona fide* offering of goods or services. It is not making a legitimate noncommercial or fair use of the Domain Name. Instead, the Complainants assert that the Respondent is using the Domain Name in connection with an email address being used in a phishing exercise.

Finally, the Complainants assert that the Respondent intentionally registered the Domain Name in bad faith for the purposes of perpetrating a fraud or scam, and to intentionally create a likelihood of confusion with the Complainants' trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's web page. The Complainants claim that their CME and CME GROUP trademarks are well known and that the Respondent knew of the Complainants' rights in the marks prior to registration of the Domain Name. The Complainants refer to various UDRP panel decisions affirming the fame of the Complainants' trademarks, including *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domain Administrator, Privacy Guardian.org / Domain Administrator, QHoster.com*, WIPO Case No. [D2016-0973](#); *Chicago Mercantile Exchange Inc. CME Group Inc. v. leemungjin*, WIPO Case No. [D2015-0672](#) (finding the CME brand to be "distinctive, famous and widely recognized around the world"); and *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Romeo Bato Jr. and Cocoo Restaurant*, WIPO Case No. [D2012-1619](#) (stating "the CME and CME Group brands are distinctive, famous and widely recognized around the world").

B. Respondent

The Respondent did not reply to the Complainants' contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14(a) and 14(b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainants have proved that they have registered trademark rights in CME and CME GROUP. The Domain Name consists of the letter string "crnegroups" and the domain name suffix ".com".

There is clearly a degree of visual similarity between "crnegroups" and the CME GROUP trademark, which is particularly evident when one considers how the Domain Name compares to the Complainants' domain name <cmegroup.com>, which comprises the Complainants' CME GROUP trademark. The letter strings "crne" and "cme" in particular are visually very similar to the Complainants' CME trademark, since "rn" can be read as "m" by Internet users who do not carefully scrutinize the Domain Name. The very minor visual differences occurring in the middle of the letter strings does not prevent the Complainants' trademarks from being recognizable in the Domain Name.

The Panel finds that the Domain Name is confusingly similar to the trademarks in which the Complainants have rights.

B. Rights or Legitimate Interests

The burden of proving absence of rights or legitimate interests in a domain name falls on complainants, but panels have long recognized that the information needed to prove such rights or legitimate interests is normally in the possession of respondents.

In order to avoid requiring complainants to prove a negative, which will often be impossible, UDRP panels have typically accepted that once a complainant has established a *prima facie* case that a respondent lacks rights or legitimate interests, the respondent carries the burden of producing that it does indeed have such rights or interests (see, *inter alia*, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)). In the present case, the Complainants have put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name. There is nothing on the record in this case to indicate that the Respondent might have any rights or legitimate interests in it, nor has the Respondent attempted to make out a case that it has. The Complainants have not authorized the Respondent to use the Domain Name, nor is there any evidence that the Respondent has ever been commonly known by it.

Also considering the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b)(iv) in particular, the Panel may find both registration and use in bad faith where there is evidence that by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on it.

In this case, the Domain Name appears to be in use for a holding page with pay-per-click links. Although those links are related to various and mostly unrelated themes, which appear to make no reference to the Complainants, considering the confusing similarity between the Domain Name and the Complainants' trademarks, it is more likely than not that the Respondent registered the Domain Name with the intention to capitalize on the reputation and goodwill of the Complainants' trademarks or otherwise mislead Internet users.

The Complainants say, though, that their cyber-defence team alerted them to the use of the Domain Name to set up an email account that has been used to fraudulently impersonate the Complainant CME Group's employees in attempts to phish the Complainant CME Group's clients. Use of a domain name to set up an email account which is then used to carry out a phishing exercise would, in the Panel's view, amount to intentional use of a domain name to attract, for commercial gain, Internet users to an online location of the Respondent. The Respondent has not availed itself of the opportunity to respond to the Complaint and these very serious allegations against it. The Panel is entitled under paragraph 14(b) of the Rules to make whatever inferences it deems appropriate from the Respondent's failure to respond to the Complaint. In this case, and taking into account all the facts and circumstances of this case, the Panel considers it appropriate to infer that it is more likely than not that the Respondent has used the Domain Name in a phishing scheme of the kind described by the Complainants and identified by the Complainants' cyber-defence team.

While the Panel considers paragraph 4(b) of the Policy to be applicable here, the Panel also finds that the Complainants have proved registration and use of the Domain Name on grounds not expressly included in paragraph 4(b) of the Policy, which is not limited to the examples of bad faith registration and use set out in it. In particular, the Panel is satisfied that the Respondent, who, like the Complainants, has an address in Chicago, is more likely than not to have been aware of the Complainants, given the fame of the Complainants' trademarks in the financial sector, which has been recognized in other UDRP decisions, and given the Respondent's alleged use of the Domain Name, which the Respondent has not denied, to carry out a phishing exercise involving impersonation of the Complainant CME Group's employees. For the reasons already given above, the Panel is prepared to infer that the Domain Name has been used in a phishing scheme of the kind described by the Complainants, and is indeed apt for such use, given its visual similarity to the CME GROUP trademark, particularly when used as part of an email address. There is no doubt that

intentional registration and use of a domain name to perpetrate a fraud is registration and use in bad faith within the meaning of paragraph 4(b) of the Policy.

Taking all of the above into account, the Panel finds that the Domain Name was registered and has been 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 Domain Name, <crnegroups.com>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: March 6, 2023