

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG, and Aldi Stores Limited v. John Coal
Case No. D2022-3479

1. The Parties

The Complainants are Aldi GmbH & Co. KG, Germany, and Aldi Stores Limited, United Kingdom (“UK”), represented by Freeths LLP, UK.

The Respondent is John Coal, Germany.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2022. On September 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 2022, 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 (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on September 21, 2022, 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 amendment to the Complaint on September 22, 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 the Respondent of the Complaint, and the proceedings commenced on September 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2022.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on October 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

The Complainants are part of the same corporate group, Aldi GmbH Co. KG (“Complainant 1”) being the owner of several registered trademarks consisting of or containing the word “ALDI”, and Aldi Stores Limited (“Complainant 2”) being the exclusive licensee in the UK of these trademarks. The trademarks are registered in multiple jurisdictions and have been used, *inter alia*, for a wide range of retail services. Below are details of a few exemplary trademarks (Annex 4 to the Complaint):

- UK Trademark registration No. 00002250300, ALDI (word), filed on October 26, 2000, registered on March 30, 2001, in Classes 1, 3, 5, 6, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34, 35.
- European Union Trade Mark registration No. 002071728, ALDI (word), filed on December 27, 2000, registered on April 14, 2005, in Classes 3, 4, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34.
- European Union Trade Mark registration No. 006870943, ALDI (word), filed on April 28, 2008, registered on October 19, 2009, in Classes 7, 9, 28.

The disputed domain name was registered on November 4, 2021 and resolves to an active website that displays pay per click links with the terms “online shop”, “food delivery services”, and “grocery shop”, which, when activated, lead to a list of different links to diverse products and services (Annex 8 to the Complaint).

5. Parties’ Contentions

A. Complainants

The Complainants contend that all three requirements stated in paragraph 4(a) of the Policy are met in the present case.

According to the Complainants, the Complainant 1 owns and the Complainant 2 is the exclusive licensee in the UK in the Complainant 1’s trademarks. The Complainant 2 was incorporated in 1988 and operates a well-known supermarket chain under common corporate control. According to the information provided by the Complainants, the turnover generated amounts to billions of pounds (Annex 5 to the Complaint). The connected companies are recognized as international leaders in grocery retailing. The Complainants submit that they operate more than 5,000 stores across the world, *inter alia*, in Australia, Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Switzerland, and the United States of America. The YouGov BrandIndex report, which is submitted by the Complainants as Annex 7, proves, according to the Complainants, that ALDI was, in the first quarter of 2022, the most popular brand in the supermarket sector in the UK and the 22nd most popular brand across all sectors in the UK.

The Complainants contend that the disputed domain name is confusingly similar to the ALDI trademarks, in which the Complainants have rights. The Complainants submit that the disputed domain name incorporates the Complainants’ trademarks. Together with “onlinee” this increases confusion as it suggests that the disputed domain name resolves to a website relating to goods or services which are specifically sold by the Complainants. Thus, Internet users would be confused into believing that the disputed domain name is registered by, or at least operated, authorized or endorsed by, the Complainants. Further, the Complainants argue that the significant goodwill in their brand when used in the disputed domain name will amount to a misrepresentation which is likely to deceive the public into believing that the disputed domain name is under the control of, or otherwise authorized by, the Complainants.

The Complainants argue that the Respondent has no license or otherwise authorization to use the ALDI name or trademark. Further, he has no rights or legitimate interests in the disputed domain name, nor any rights in the trademarks of the Complainants, and is not associated or otherwise connected with the Complainants.

The Complainants submit that the disputed domain name was registered and is being used in bad faith.

The registration of the disputed domain name took, according to the Complainants, unfair advantage of the Complainants' rights with the intention to mislead Internet users for commercial gain. According to the Complainants, the website under the disputed domain name would lead to various sponsored links that mistakenly let users believe that the content was endorsed or otherwise authorized by the Complainants. The Complainants claim that these circumstances negatively affect the Complainants' reputation and professional activities. In addition, the Complainants believe that there is a distinct possibility that the disputed domain name was registered in order to offer it for sale to the Complainants (or their competitors) at a price higher than the registration cost, hoping that the parties would bid against each other to secure the domain name for themselves.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Pursuant to paragraph 4 (a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In the following, the Panel will discuss in consecutive order whether each of these requirements are met.

A. Identical or Confusingly Similar

On the first element, the test of identity or confusing similarity under the Policy, paragraph 4(a)(i) is limited in scope to a direct comparison between the Complainant's trademark and the textual string which comprises the disputed domain name.

In this case, the Complainants have provided evidence that they own registered trademark rights in the denomination ALDI (Annex 4 of the Complaint). The Panel agrees that the disputed domain name contains the trademark ALDI in its entirety. The addition of the term "onlinee" does not prevent a finding of confusing similarity between the disputed domain name and the trademark ALDI. Even with the addition of "onlinee", the Complainants' trademark is recognizable in the disputed domain name. If the relevant mark is recognizable in the disputed domain name, the addition of other terms will not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see *Fashion Nova v. Blue Face*, WIPO Case No. [D2022-1581](#)).

Moreover, the generic Top-Level Domain ("gTLD") ".com" does not affect the confusing similarity in any way due to the fact that it is a Top-Level -Domain which is viewed as a standard registration requirement and, thus, usually not taken into consideration under the first element analysis. For the purposes of assessing

identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is therefore permissible for the Panel to ignore the gTLD (section 1.11 of [WIPO Overview 3.0](#), see also *Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *G4S Plc v. Noman Burki*, WIPO Case No. [D2016-1383](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)). Thus, the Panel shall disregard the “.com” gTLD included in the disputed domain name.

Based on the above, the Panel finds that the disputed domain name is confusingly similar to the Complainants’ ALDI trademarks within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

On the second element, under paragraph 4(a)(ii) of the Policy, the Complainants have the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

However, it is consistent case-law of UDRP panels that it is sufficient for a complainant to make a *prima facie* case showing that the respondent has no rights or legitimate interests in a disputed domain name in order to place the burden of production on the respondent (see e.g. *Credit Agricole S.A. v. Dick Weisz*, WIPO Case No. [D2010-1683](#); *Champion Innovations, Ltd. v. Udo Dussling (45FHH)*, WIPO Case No. [D2005-1094](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)).

The Panel notes that with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent, before any notice of the dispute, used or prepared 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.

The Panel further notes that with respect to paragraph 4(c)(ii) of the Policy, there is no evidence that indicates that the Respondent has ever been commonly known by the disputed domain name or has acquired trademark rights in a name corresponding to it.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, and is 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 trademark at issue.

On the contrary, the Complainants have not authorized, licensed or permitted in any way the Respondent to register or use the disputed domain name. This finding is supported by the fact that the Respondent failed to file a response within the proceedings before the Panel. As far as failure to file a response is concerned, it is for a complainant to prove its case, as there may be good reasons why an honest respondent may decide not to prepare and file such document. But where allegations are made which are as serious as those levied by the Complainants in the Complaint, one would expect any honest respondent to positively deny those allegations (see *The Commissioners for HM Revenue and Customs v. Tyrone Jackson*, WIPO Case No. [D2018-0298](#)).

Consequently, the Panel finds that the Respondent’s default in refuting the *prima facie* case made by the Complainants is sufficient to establish a lack of rights or legitimate interests of the Respondent in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

On the third element, under paragraph 4(a)(iii) of the Policy, a complainant has to establish that the disputed domain name has been registered and is being used in bad faith by the respondent.

The Complainants’ rights in the trademarks ALDI and the ALDI name predate the Respondent’s registration of the disputed domain name, which was registered on November 4, 2021. Based on the evidence provided

by the Complainants regarding the substantial use and reputation of its ALDI trademark, and the absence of any evidence to the contrary on the part of the Respondent, it is inconceivable that the Respondent had not been aware of the Complainants' trademarks at the time of registration of the disputed domain name.

Moreover, the Panel finds that the evidence submitted by the Complainants shows that the Respondent has been using the disputed domain name for the purpose of redirecting Internet users to sponsored links with products and services that compete with those provided by the Complainants, which constitutes a classic case of registration and use in bad faith. The fact that the sponsored links also contain such of the Complainants' competitors shows an intention to profit from the confusion created due to the confusing similarity of the disputed domain name with the Complainants' trademarks *per se*. It is more than likely that the Respondent is profiting commercially from these sponsored links.

Furthermore, the Panel finds that the fact that the Respondent has not participated in these proceedings and leaves unrebutted the Complainants' allegations, supports a finding that the disputed domain name was registered and used in bad faith (see also *Confederation Nationale du Credit Mutuel v. WhoisGuard Protected, WhoisGuard, Inc.*, / *Jean Duca*, WIPO Case No. [D2021-0977](#); *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#); *The Commissioners for HM Revenue and Customs v. Calvon Bonsu*, WIPO Case No. [D2020-1075](#)).

In light of the above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The Complainants have thus satisfied 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 disputed domain name <aldionlinee.com> be transferred to the Complainants.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: November 8, 2022