

## **ADMINISTRATIVE PANEL DECISION**

Lidl Stiftung & Co. KG v. Milan Petrov  
Case No. D2022-4460

### **1. The Parties**

The Complainant is Lidl Stiftung & Co. KG, Germany, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Milan Petrov, Serbia.

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

The disputed domain name <lidl-shop.management> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing complete registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 23, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on November 28, 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 November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 29, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on January 11, 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 belongs to the LIDL-Group, a global discount supermarket chain based in Germany. The LIDL-Group operates more than 10,000 stores with over 300,000 employees and currently its stores can be found in 31 countries.

The Complainant owns several trademark registration in different jurisdictions. As such and by way of example International trademark for LIDL with registration number 974355 registered on May 9, 2008.

Previous UDRP decisions have recognized LIDL as a well-known trademark. See WIPO decision *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-0144](#).

The disputed domain name was registered on June 21, 2022, and redirects to a parking page with no active web page.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name comprises its LIDL trademark in its entirety. The addition of a purely descriptive term, such as "shop", suggests that the Respondent is linked to the Complainant. Indeed, the combination of the trademark LIDL with the descriptive term "shop" and the Top Level Domain <.management>, e.g., <lidl-shop.management> leads the Internet users to think of a LIDL online shop. Thus, the Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8: Where the relevant trademark is recognizable within the disputed domain name, the addition of other descriptive, geographical or meaningless terms does not prevent a finding of confusing similarity.

With regard to the second element, the Complainant alleges that where a domain name consists of a trademark plus an additional term, UDRP Panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The composition of the disputed domain name leads to such affiliation which does not exist. Further, a non-commercial or fair use of the disputed domain name is not cognizable.

Besides, argues the Complainant, there is no *bona fide* offering of goods or services but the use in connection to a Parking Page. Such use does not constitute legitimate use ([WIPO Overview 3.0](#), section 3.3).

Further, the Complainant states that to the best of its knowledge the Respondent is not commonly known by "Lidl" or "lidl-shop" or "lidl-shop.management". Neither the Complainant, nor any other Company of the LIDL-Group, have granted permission to use LIDL to the Respondent.

Finally, the Complainant supports a finding of bad faith registration and use based on the following: the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the trademark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith pursuant to paragraph 4(b)(iv) (section 3.1.4, [WIPO Overview 3.0](#)). Further, the disputed domain name endorses an assumption of affiliation between the Complainant and the disputed domain name, as Internet users would always expect a website of Complainant.

The Complainant affirms that the Respondent "knew or should have known" of the registration and use of the trademarks of the Complainants prior to the registration of the domain name. Therefore, bad faith should be ascertained. "Lidl", as a term, is not a common dictionary word and Complainant's trademarks are extremely well known and have a strong reputation around the world, including in Serbia.

In fact, the addition of a descriptive term as “shop” it must lead to the assumption that the Respondent had knowledge of the Complainant’s business and trademarks and did not choose the disputed domain name by chance.

There is no conceivable legitimate interest for the use of the disputed domain name by the Respondent where it only redirects to a parking page.

Moreover, insists the Complainant, Passive Holding doctrine should be applied since Complainant’s trademarks are (i) very distinctive and of strong reputation, (ii) Respondent conceals his identity (see publicly available Whois Data) and (iii) the domain name cannot be used in good faith.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

### **A. Identical or Confusingly Similar**

The Complainant has established rights in the mark LIDL by virtue of its trademark registrations.

The LIDL mark is indeed clearly recognizable within the disputed domain name <lidl-shop.management>. The Panel accepts that the addition of a term (“shop”) does not prevent a finding of confusingly similarity under the first element. Moreover, WIPO Overview section 1.11 (“[WIPO Overview 3.0.](#)”), states that: “The applicable Top Level Domain (‘TLD’) in a domain name [...] is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

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

The onus proving of the second requirement rests on the Complainant that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial 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.

While these is an open list, the complainant can provide any other evidence to the satisfaction of the panel.

As set out in the [WIPO Overview 3.0](#), section 2.1.: "...panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name".

The Complainant asserts that the use in connection to a parking page does not constitute legitimate use. The Respondent is not commonly known by the disputed domain name. Neither the Complainant has ever authorized the Respondent to use its trademarks in a corresponding domain name. Further, the Complainant points out how the disputed domain name impersonates or at very least suggest sponsorship by the Complainant.

Under these circumstances the Panel finds that a *prima facie* case has been raised against the Respondent. However, the silence of the Respondent once he has been duly notified by the Center of the Complaint, avoids the Panel to ponder its allegations and evidence and leaves the Complainant's *prima facie* case un rebutted.

Accordingly, the Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

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

The Panel notes the Complainant's widespread use of LIDL trademark in connection to its activity and business. The Panel also notes how previous UDRP decisions appreciated LIDL as well-known trademark. The Panel is of the opinion that the similarity between the disputed domain name and the Complainant's trademark may suggest that the disputed domain name resolves or to the Complainant's official website, or at least is affiliated with the Complainant. That said, the reproduction of LIDL in its entirety and the addition of a word connected with Complainant's business leads the Panel to the conclusion that, on balance, the Respondent targeted the Complainant and its trademarks when registering the disputed domain name.

Under these circumstances the Panel finds that the Respondent knew or should have known about the Complainant, its trademarks and business. Should the Respondent be part of this proceeding and had come with an appropriate allegation, the Panel may have determined otherwise. However, this not the case.

Accordingly, the Panel finds that the Respondent had previous knowledge of the Complainant and its marks at the moment of the registration.

The Panel looks at [WIPO Overview 3.0](#), section 3.3: "...factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to

which the domain name may be put.” See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The disputed domain name is not resolving to an active website but to a parking page which displays the following: “No website is currently set up for this domain.” Thus, there is no current use of the disputed domain name.

The overall circumstances of this case strongly suggest that the Respondent’s non-use of the disputed domain name is in bad faith. As such, the renown of the Complainant’s LIDL trademark, the Respondent’s failure to provide response in this proceeding and the absence of any right or legitimate interests in the Respondent as noted in the precedent heading.

Therefore, the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy after producing a strong case to the satisfaction of the Panel.

## **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 <lidl-shop.management> be transferred to the Complainant.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: January 25, 2023