

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. WEST TREOY

Case No. D2022-2760

1. The Parties

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

The Respondent is WEST TREOY, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <produits-lidl.com> is registered with Combell NV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 1, 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 August 3, 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 August 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 30, 2022.

The Center appointed Lorenz Ehrlar as the sole panelist in this matter on September 9, 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 Complainant is a company that belongs to the Lidl-Group, a very well-known supermarket chain which is based in Germany and operates more than 10,000 stores, most of them in Europe, with over 300,000 employees.

The Complainant owns numerous trademarks, for instance European Union trademark LIDL, no. 001778679 and international trademark LIDL, no. 974355 designating several countries, mainly in Europe and Asia. These trademarks cover a big range of goods and services and were registered two or more decades ago. The Complainant also holds several domain names such as <lidl.fr>, <lidl.uk>, <lidl.us> etc.

The disputed domain name was registered by the Respondent in January 2022 and is clearly posterior to the Complainant's trademarks.

The disputed domain name is inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name, <produits-lidl.com> is confusingly similar to its LIDL trademarks.

Furthermore, the Complainant states that the Respondent is not affiliated with its group and that no license has been granted to the Respondent to use the Complainant's trademarks.

Lastly, the Complainant contends that the Respondent registered and "uses" the disputed domain name in bad faith, even though it does not resolve to any website, in particular because the Respondent knew or should have known of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The disputed domain name registered by the Respondent 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The trademarks put forward by the Complainant demonstrate that the Complainant has rights in LIDL.

Under the UDRP, the requirement under paragraph 4(a) of the Policy requires that the disputed domain name be identical or confusingly similar to the Complainant's trademarks. There is no requirement of similarity of goods and/or services.

The existence of confusing similarity within the meaning of paragraph 4(a) of the Policy is not in doubt in the present case, given that the main element in the disputed domain names, *i.e.* “lidl”, is identical with the Complainant’s distinctive trademark LIDL. The incorporation of a trademark in its entirety is typically sufficient to establish that a disputed domain name is identical or confusingly similar to a trademark. The other element of the disputed domain name, *i.e.* the element “produits” does not avoid a finding of confusing similarity.

As far as the generic Top Level Domain (“gTLD”) “.com” is concerned, this element has a technical function and therefore is typically not taken into account when assessing the issue of identity or confusing similarity.

The Panel thus finds that the disputed domain name is confusingly similar with the Complainant’s trademark LIDL.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name, in particular that the Respondent has not at any time been commonly known by the disputed domain name and the Respondent is not making legitimate use of said disputed domain name. The Complainant clearly states that it has not granted the Respondent any rights to use its trademarks.

UDRP panels found in previous decisions that in the absence of any license or permission from the complainant to use widely known trademarks, no *bona fide* or legitimate use of a disputed domain name may reasonably be claimed (*LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Furthermore, by not submitting any response to the Complaint, the Respondent failed to invoke any circumstance that might demonstrate, pursuant to paragraph 4(c) of the Policy, that it holds any rights or legitimate interests in the disputed domain name (*Ahead Software AG v. Leduc Jean*, WIPO Case No. [D2004-0323](#); see also, *Nintendo of America, Inc., v. Tasc, Inc. and Ken Lewis*, WIPO Case No. [D2000-1563](#) (finding that respondent’s default was sufficient to conclude that it had no rights or legitimate interests in the disputed domain names).

Accordingly, the Panel finds that the Complainant has shown that the Respondent does not have any rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must, in addition to the matters set out above, demonstrate that the disputed domain name has been registered and is being used in bad faith.

The undisputed *prima facie* evidence establishes that the Respondent is not affiliated with the Complainant and has no license or other authorisation to use the Complainant’s trademark.

The Respondent registered the disputed domain name well after the Complainant’s trademark was in use. The Panel finds that the Respondent should have known about the Complainant’s trademark and business when registering the disputed domain name. This Panel considers that the disputed domain name for itself is a strong indication that the Respondent was aware of the Complainant’s trademark LIDL, as it seems more than unlikely that the Respondent would have created – randomly – a domain name that is almost identical with the Complainant’s distinctive and well-known trademark (*cf. Motul v. Contact Privacy Inc. Customer 0138693539 / Konstantin Speranskii*, WIPO Case No. [D2016-2632](#)). This Panel therefore holds that the registration of the disputed domain name was made in bad faith.

It is constant panel practice to consider the passive holding of a domain name to be in bad faith if the complainant’s trademark is well known and has a solid reputation. This conclusion is also authorised by the

fact that the Respondent has not submitted any evidence of any good faith use of the domain name or at least of any intention of a good faith use of the domain name.

All these circumstances allow to conclude that the Respondent is using the disputed domain name in bad faith.

The Respondent has not brought any evidence showing that the Complainant's allegations are untrue. Absent any such evidence, based on the evidence submitted by the Complainant, the Panel admits the Complainant's submission that the Respondent has registered and is using the disputed domain name in bad faith within the meaning of paragraph (4)(a)(iii) of the Policy.

The Complainant therefore has established registration and use of the disputed domain name 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 disputed domain name, <produits-lidl.com> be transferred to the Complainant.

/Lorenz Ehrler/

Lorenz Ehrler

Sole Panelist

Date: September 22, 2022