

ADMINISTRATIVE PANEL DECISION

**Aldi GmbH & Co. KG and Aldi Stores Limited v. Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2022-4260**

1. The Parties

Complainants are Aldi GmbH & Co. KG, Germany and Aldi Stores Limited, United Kingdom, represented by Freeths LLP, United Kingdom.

Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <aldiconstructionmn.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 November 9, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 Complainants on November 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amendment to the Complaint on December 1, 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 Respondent of the Complaint, and the proceedings commenced on December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 28, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on January 18, 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

Complainants are active in the super market business and belong to the same group of companies. They maintain more than 5,000 stores and are active in various European countries, the USA and Australia. First Complainant is the owner and second Complainant is the licensee in the UK of various ALDI trademarks including the European Union registration No. 002071728, ALDI (word), filed on December 27, 2000 and registered for goods and services in classes 03, 04, 07, 09, 16, 24, 25, 29, 30, 31, 32, 33, 34 and 36. Complainants keep their main website at "www.aldi.co.uk".

The Domain Name was filed on March 23, 2022, and redirects to different sites at different times.

5. Parties' Contentions

A. Complainant

Complainants assert that they have established all three elements required under paragraph 4(a) of the Policy for the transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

Complainants have demonstrated rights through registration and use on the ALDI mark.

The Panel finds that the Domain Name is confusingly similar with the ALDI trademark of Complainant.

The Domain Name incorporates the said trademark of Complainant in its entirety. This is sufficient to establish confusing similarity. The addition of the element "constructionmn" in the Domain Name does not prevent a finding of confusing similarity as the ALDI mark remains clearly distinguishable ([WIPO Overview 3.0](#), section 1.8).

The generic Top-Level Domain ("gTLD") ".com" is also disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements*

SAS v. Zhan Yequn, WIPO Case No. [D2017-0275](#)). The Panel finds that the Domain Name is confusingly similar to the ALDI trademark of Complainants.

Complainants have established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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.

The Panel finds that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainants, Respondent was not authorized to register the Domain Name.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, the Domain Name is used to direct to third party sites.

Furthermore, there is no evidence on record giving rise to any rights or legitimate interests in the Domain Name on the part of Respondent within the meaning of paragraphs 4(c)(ii) and 4(c)(iii) of the Policy.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainants have established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Names registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. Complainants' mark ALDI is known in the field of super markets, as per Complaint. Because the ALDI mark had been used and registered at the time of the Domain Name registrations by Respondent, the Panel finds that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. D2000-0226).

As regards bad faith use, the Domain Name redirects to third party sites. The Panel also notes that the Domain Name was registered with a privacy shield service to hide the registrant's identity.

Finally, the Panel notes the pattern of abusive registrations in which the Respondent has been involved (see e.g. over 200 cases involving named Respondent Carolina Rodrigues including *Calvin Klein Trademark Trust and Calvin Klein, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-3045](#); *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-2834](#); *Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1991](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#); *Philip Morris USA Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1109](#); *Société Air France v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues*, WIPO Case No. [D2019-0578](#); *Ford Motor Company v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2018-2787](#); over 750 cases involving named Respondent Above.Com Domain Privacy including *Robert Bosch GmbH v. Above.com Domain Privacy, Above.com Domain Privacy / David Woo*, WIPO Case No. [D2018-1549](#); *The American Automobile Association, Inc. v. Above.com DomainPrivacy a/k/a Oliver Goldsmith/ Host Master, Transure Enterprise Ltd. / David Woo, DNWDNS/ Shu Lin*, WIPO Case No. [D2011-1884](#); *Intesa Sanpaolo S.p.A. v. Above.com Domain Privacy / David Woo*, WIPO Case No. [D2010-1566](#); *Intesa Sanpaolo S.p.A. v. Above.Com Pty Ltd./ David Woo*, WIPO Case No. [D2010-1611](#); *Revlon Consumer Products Corporation v. David Woo / Above.com Domain Privacy*, WIPO Case No. [D2010-1483](#); *Universidad Autónoma de Nuevo León v. Above.Com Domain Privacy / David Woo*, WIPO Case No. [D2010-1160](#); and over 3 cases involving named Respondent Wis Inc, including *Mothers Polishes Waxes Cleaners Incorporated v. WIS Inc.*, WIPO Case No. [D2020-2903](#); *Sodexo v. Wis Inc.*, WIPO Case No. [D2019-2185](#); *SODEXO v. Wis INC, Wis INC*, WIPO Case No. [D2020-0887](#). All of the above cases resulted in decisions against Respondent.

This pattern, established by the decisions cited above, further supports a finding of bad faith pursuant to paragraph 4(b)(ii) of the Policy, which provides that a "pattern of such conduct" is evidence of bad faith.

Under these circumstances and on this record, the Panel finds that Respondent has registered and used the Domain Names in bad faith.

Complainants have established Policy paragraph 4(a)(iii).

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, <aldiconstructionmn.com>, be transferred to the second Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: February 9, 2023