

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG and Aldi Stores Limited v. Leslie Wilson
Case No. D2022-4263

1. The Parties

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

The Respondent is Leslie Wilson, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <aldipricematch.com> is registered with Domain.com, LLC (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 November 9, 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 Complainants on November 15, 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 November 21, 2022. On November 22, 2022, the Respondent sent an email communication to the Center indicating that it had attempted to contact the Complainants but had received no response.

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 December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2022. The Respondent did not submit any formal response. On December 28, 2022, the Center notified the Parties that it would proceed to panel appointment. On January 2, 2023, the Respondent unilaterally requested suspension of the proceedings.

The Complainants did not reply to the Center's invitation as to whether it wished to explore settlement options.

The Center appointed Antony Gold as the sole panelist in this matter on January 23, 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 Complainants form part of a large international group of grocery retailers, with more than 5,000 stores worldwide. The Complainants' ALDI brand is well-known; in the first quarter of 2022, it was the most popular brand in the supermarket sector in the United Kingdom.

The first-named Complainant owns various registered trade marks which comprise or include the sign ALDI. These include, by way of example only, United Kingdom trade mark, registration number UK2250300, for ALDI, registered on March 30, 2001, in multiple classes. The second-named Complainant is the exclusive licensee in the United Kingdom of those marks and has traded under its current corporate name since 1989. For the purpose of these proceedings, it is not necessary to distinguish between the Complainants and they are referred to in the remainder of this decision as "the Complainant".

The disputed domain name was registered on September 7, 2021. It resolves to a blank page, although a notice is generated in the Internet browser bar; "This site is under development"¹.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The disputed domain name incorporates the Complainant's ALDI mark in full. The additional term "pricematch" enhances confusion as it suggests that the disputed domain name will host a webpage relating to goods or services which are sold by the Complainant.

The Complainant says also that the Respondent has no rights or interests in the disputed domain name. The Complainant has not licensed or otherwise authorized the Respondent to use its ALDI trade mark. So far as the Complainant is aware, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services, nor has it been known by the disputed domain name, nor has it made any legitimate noncommercial or fair use of the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith.

It is inevitable that Internet users will be confused into believing that the disputed domain name has some form of association with the Complainant. The registration of the disputed domain name therefore took unfair advantage of the Complainant's rights and was accordingly in bad faith. Moreover, the Respondent has been using, or is planning to use, the disputed domain name to attract Internet users for commercial gain to a website to which the disputed domain name resolves, thereby creating a likelihood of confusion with the Complainant's ALDI mark as to the source, sponsorship, affiliation or endorsement of its website. Even if consumers are not confused, the distinctive character and reputation of the Complainant's ALDI mark is harmed by association with the Respondent. Additionally, or alternatively, there is a distinct possibility that

¹ As explained at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly visited the web page to which the disputed domain name resolves and has established that it takes the form described above.

the disputed domain name was registered in order that the Respondent might offer it to the Complainant, or a competitor of it, at a price higher than the Respondent's cost of registration.

B. Respondent

Save that, on January 2, 2023, the Respondent unilaterally requested suspension of the proceedings, the Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

The Complainant has produced evidence of its registered trade marks for ALDI, including the mark in respect of which full details have been set out above, which thereby establish its rights in this mark.

When considering whether the disputed domain name is identical or confusingly similar to the Complainant's mark the generic Top Level Domain ("gTLD") ".com" is disregarded as it is a technical requirement of registration. The disputed domain name accordingly comprises the Complainant's ALDI trade mark, followed by the term "pricematch". The addition of this term does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". See also *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. [D2015-1679](#).

The Complainant's ALDI mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, in summary, that a respondent may demonstrate that it may have rights or legitimate interests in a disputed domain name by demonstrating either that, before any notice to it of the dispute, it has been using or has made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services or that it has been commonly known by the domain name or that it has been making a legitimate noncommercial or fair use of the domain name.

Use of the disputed domain name solely to resolve to a blank webpage coupled with a notice indicating that it is under development does not comprise use in connection with a *bona fide* offering of goods and services;

see, for example, *Bayerische Motoren Werke AG v. Hao Luc*, WIPO Case No. [D2018-1584](#). The first circumstance outlined above is accordingly not fulfilled.

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the third circumstance applicable; non-use of the disputed domain name does not equate to a legitimate noncommercial use of it.

The Complainant having made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent; see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). In the absence of any substantive response from the Respondent to the Complainant's contentions, it has failed to satisfy that burden. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has established that, as at the date of registration of the disputed domain name, its ALDI mark was widely known within the United Kingdom. The disputed domain name incorporates the entirety of the Complainant's ALDI mark and Internet users are apt to associate the additional term within it with supermarket retailers such as the Complainant. Taking these factors into account, coupled with the failure of the Respondent to provide any explanation which might provide a good faith justification for its registration of the disputed domain name, it is evident on at least a balance of probabilities, that the Respondent was aware of the Complainant's ALDI mark as at the date of registration of the disputed domain name and registered it in order to take advantage in some manner of its confusing similarity with the Complainant's mark.

Registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and in circumstances where the domain name may be put to a misleading use, amounts to bad faith. Prior UDRP panels have regularly found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark by an unaffiliated entity, particularly if, for example the domain name incorporates the complainant's mark plus a descriptive term, can by itself create a presumption of bad faith; see section 3.1.4 of the [WIPO Overview 3.0](#) and, by way of example, *Bureau Veritas v. Wolfgang Robert*, WIPO Case No. [D2021-2376](#).

The inactive status of the disputed domain name does not prevent a finding of bad faith use under the doctrine of passive holding. In this respect, see section 3.3 of the [WIPO Overview 3.0](#), which explains that; "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding". The factors that are typically considered when 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 concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *Carrefour v. Jason host LLC*, WIPO Case No. [D2019-1588](#).

Applying these factors to the current circumstances: (i) the Complainant makes extensive use of its ALDI mark and it is widely recognized within the UK; (ii) the Respondent has not provided a substantive response to the Complaint, nor provided any evidence of actual or contemplated good faith use of the disputed domain name; (iii) the Respondent has sought to conceal its identity by its use of a privacy service; and (iv) having regard to the fact that the disputed domain name is so clearly referable to the Complainant, it is not possible to conceive of any plausible good faith use to which it could be put by the Respondent. Accordingly, the circumstances of the Respondent's holding of the disputed domain name support a finding of bad faith under the doctrine of passive holding.

For the above reasons, the Panel therefore finds that the disputed domain name has been registered and is being 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 disputed domain name, <aldipricematch.com>, be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: February 6, 2023