

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. Zoran Jovic
Case No. D2022-4462

1. The Parties

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

The Respondent is Zoran Jovic, Serbia.

2. The Domain Name and Registrar

The disputed domain name <lidl-shop.shop> 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 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 20, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on December 29, 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 part of the LIDL-Group, a famous global discount supermarket chain based in Germany. The LIDL-Group operates more than 10.000 stores with over 300.000 employees. Currently its stores can be found in 31 countries, *inter alia*, in Germany, the Complainant operates around 3.200 stores. The Complainant also offers various additional services, e.g., a mobile phone network or travel services.

The Complainant is the owner of numerous trademarks for the term "LIDL" ("LIDL trademarks"), including, among others:

- German trademark registration LIDL No. 2006134, registered on November 11, 1991;
- German trademark registration LIDL No. 30009606, registered on March 9, 2000;
- International trademark registration LIDL No. 1541701, registered on January 30, 2020;
- International trademark registration LIDL No. 1537891, registered on January 30, 2020;
- European Union trademark registration LIDL No. 001778679, registered on August 22, 2002; and
- European Union trademark registration LIDL No. 013192752, registered on February 27, 2015.

The LIDL-Group is also owner of numerous domain names including the LIDL trademarks, *inter alia* the domains <lidl.de>, <lidl.pl>, <lidl.fr>, <lidl.ro>, <lidl.es> or <lidl.com>, and promotes the Complainant's trademarks on the associated websites.

The Respondent registered the disputed domain name on July 22, 2022. It currently resolves to a parking page of the hosting portal SBB, United Group.

5. Parties' Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the Complainant's trademarks. The additional term "shop" lets one assume that the disputed domain name holder is economically linked to the Complainant as the combination of the designation "lidl" with the descriptive term "shop" and the Top Level-Domain ("TLD") ".shop" leads Internet users to think of a LIDL online shop.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. A noncommercial or fair use of the disputed domain name is not cognizable, the more so as the disputed domain name contains the additional term "shop". There is no indication of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services as the disputed domain name only resolves to a parking page of the hosting portal SBB, United Group. To the best of the Complainant's knowledge, the Respondent is not commonly known by "lidl" or "lidl-shop" or "lidl-shop.shop".

On the third element of the Policy, the Complainant asserts that the LIDL trademarks are globally well known. The Complainant's use of its trademarks and business activities as a very famous discount supermarket chain predates the registration of the disputed domain name by decades. The Respondent knew or should have known of the registration and use of the LIDL trademarks prior to the registration of the disputed domain name. Registering a domain name that is confusingly similar to a widely known trademark creates a presumption of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (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.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of several trademarks containing the word "LIDL". Suitable evidence was submitted as proof. Consequently, the Panel finds that the Complainant has proven that it has rights in the LIDL trademarks.

The disputed domain name contains the LIDL trademarks entirely with the addition of a hyphen, the term "shop" and the generic TLD ("gTLD") ".shop". Section 1.8 of [WIPO Overview 3.0](#) states: "Where the relevant trademark 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. The nature of such additional term(s) may however bear on assessment of the second and third elements." Further, section 1.11.1 of [WIPO Overview 3.0](#) states: "The applicable TLD in a domain name (*e.g.*, '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." The gTLD ".shop" will therefore be discounted in the Panel's consideration of confusing similarity. Moreover, the Panel finds that the relevant trademark LIDL within the disputed domain is recognizable, so that the additional term "shop" and the hyphen would not prevent a finding of confusing similarity.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#), states, "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Complainant has not authorized the Respondent to use the Complainant’s trademarks, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Further, the Respondent has not attempted to justify why the disputed domain name was registered.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has made a *prima facie* showing of the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered or is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Section 3.3 of [WIPO Overview 3.0](#) reads: “From 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. While panelists will look at the totality of the circumstances in each case, 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.”

Considering the reputation and public presence of the Complainant, it is unlikely that the respondent had no knowledge of the LIDL trademarks. The Panel notes the Complainant’s business interests as part of a famous global discount supermarket chain and finds that the addition of the word “shop” within the disputed domain name suggests, wrongly, that there is a connection between the Respondent and the Complainant. Consideration of the term “shop” would highlight a confusing similarity with the LIDL trademarks because it is understood as an indication for the point of the sale of the Complainant’s products. Further, from the point of view of the reputation of the LIDL trademarks and the wide-ranging list of goods and services registered under it, a possibility of a commercial, *bona fide* use of the website to be retrieved under the disputed domain name does not appear plausible. In light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website or affect the commercial activities of the Complainant by creating a likelihood of confusion with the Complainant’s trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <lidl-shop.shop> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: January 12, 2023