

## **ADMINISTRATIVE PANEL DECISION**

Lidl Stiftung & Co. KG. v. NICOL MALLARD  
Case No. D2022-4772

### **1. The Parties**

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

The Respondent is NICOL MALLARD, France.

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

The disputed domain name <lidl-france.online> is registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2022. On December 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 2023, 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 December 19, 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 December 20, 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 sent notification to the Respondent of the Complaint, and the proceedings commenced on January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center has sent notification of the Respondent’s default on January 25, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on January 27, 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 is associated with the renowned global discount supermarket chain, the LIDL Group, which is headquartered in Germany. The LIDL Group operates more than 10,000 stores across 31 countries and a workforce of 300,000 employees. Within Germany, the group operates approximately 3,200 stores. In addition, the Complainant offers additional services like mobile phone network and travel services.

The Complainant is the holder of multiple trademark registrations for LIDL at the national and international level, which are valid and enforceable in several jurisdictions worldwide, including Germany, France, and others countries around the world. Among others, the Complainant is holder of the following registrations:

- German trademark registration number 2006134 for the word LIDL, filed on July 3, 1991, and registered on November 11, 1991, covering goods in Classes 3, 5, 8, 11, 16, 18, 21, 28, 30, 31, 32, and 33;
- European Union trademark registration number 001778679 for the word LIDL, filed on July 27, 2000, and registered on August 22, 2002, covering goods and services in Classes 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, and 42.

The LIDL Group utilizes innovative websites for advertising the Complainant's trademarks globally, which can be accessed through Top-Level Domains such as <lidl.fr>, <lidl.pl>, <lidl.de>, <lidl.ro>, <lidl.es>, and <lidl.com>, and are designed for customers in different countries.

The disputed domain name was registered on November 30, 2022, and at the time of filing the Complaint, it resolves to a parking page.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant states that the disputed domain name is confusingly similar to the Complainant's trademark LIDL. LIDL comes from a co-founder's name and has no common meaning in English or German and it is recognizable, distinctive trademark with an international reputation. The disputed domain name includes the trademark in its entirety and the addition of descriptive, meaningless and geographical terms does not prevent a finding of confusing similarity. The trademark LIDL is the distinctive part and users will associate it with the Complainant. The disputed domain name suggests an economic link to the Complainant as it includes the trademark LIDL and the geographical term "France" which leads Internet users to think of LIDL website from France or for the French market. The gTLD ".online" does not affect the similarity between the domain name and trademark.

The Respondent is not commonly known by the names in the disputed domain name and has not been granted permission by the Complainant or any other company in the LIDL group to use their trademark. The disputed domain name resolves to a parking page amen.fr, a brand of the host provider Register S.p.A., which does not constitute legitimate use. The Complainant has requested that the host provider permanently block/delete the website and content on the disputed domain name.

In relation to bad faith, the Complainant contends that the LIDL trademark is distinctive and enjoys strong reputation in view of its widespread and longstanding use in connection with a famous discount supermarket chain predates the registration of the disputed domain name for decades. Therefore, the Respondent should be aware of the Complainant and its well-known trademark and no conceivable legitimate use of the disputed domain name is present in this case. The bad faith registration and usage of the disputed domain name is apparent in its resemblance to the Complainant's widely recognized trademark. Furthermore, the Respondent knew or should have been aware about the Complainant's trademark and had no legitimate interest in using the disputed domain name. Lack of any conceivable legitimate use and resolution to a parking page is also evidence of bad faith.

## B. Respondent

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

## 6. Discussion and Findings

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues presented in the case based on the statements and documents submitted by the Complainant. "A Panel shall decide a complaint 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", as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent in bad faith.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#))).

The Complainant holds valid trademark registrations for word LIDL of which the Complainant provided evidence of trademarks registrations. The disputed domain name consists of the Complainant's trademark LIDL in its entirety. Furthermore, the disputed domain name also contains a hyphen and the geographical term "France". The addition of the geographical term "France" does not prevent a finding of confusing similarity with Complainant's trademark LIDL, since the trademark LIDL is fully integrated in the disputed domain name, and the hyphen and term "France" does not prevent the trademark from being recognizable in the disputed domain name. The disputed domain name consists also of the gTLD ".online". The applicable gTLD in a domain name, such as ".online" in this case, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11 of the [WIPO Overview 3.0](#)). The Panel finds no relevance in the applicable gTLD in this case and the same is therefore disregarded from comparison.

In view of the above, the Panel finds that the Complainant has proven that the disputed domain name is identical to the trademark in which the Complainant has established rights in accordance with paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Under this second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1).

Moreover, the Policy provides guidance to respondents on how to demonstrate rights or legitimate interests in the domain name. In particular, paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name, including: (i) use of the domain name “in connection with a *bona fide* offering of goods or services”; or (ii) demonstration that the respondent has been “commonly known by the domain name”; or (iii) “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 notes that there is no relation between the Complainant and the Respondent, disclosed to the Panel or otherwise apparent from the record. The Respondent has not been granted a license by the Complainant and has not in any other way been given permission to use the Complainant’s LIDL trademark or any other confusingly similar sign. Furthermore, there is no indication presented before the Panel that the Respondent is commonly known by the disputed domain name. The Respondent did not present any proof or justification that would have suggested any rights or legitimate interests in relation to the disputed domain name.

Moreover, the nature of the disputed domain name, composed of the Complainant’s trademark along with the geographical term “France”, carries a high of implied affiliation, contrary to the fact, which cannot constitute fair use (see [WIPO Overview 3.0](#), section 2.5.1).

In accordance with the above, the Panel finds that the Complainant has made a *prima facie* demonstration 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, and that accordingly the requirements of paragraph 4(a)(ii) of the Policy have been met by Complainant.

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

The third element of paragraph 4(a)(iii) of the Policy requires a complainant to demonstrate that the respondent registered and is using the disputed domain name in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when, by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location by creating a likelihood of confusion with the complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Complainant’s rights to the LIDL trademark existed at least 31 years prior to the registration of the disputed domain name. Moreover, previous panel decisions have recognized the unique and well-known nature of the Complainant’s LIDL trademark (see *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-1441](#)).

The Respondent did not provide any argument of obtaining the disputed domain name without being aware of the Complainant’s recognized trademark. A quick Internet search would reveal of the existence of the LIDL supermarkets chain and LIDL trademark. Consequently, the Panel determines that the Respondent was aware of the Complainant’s trademark at the time of registration of the disputed domain name. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Furthermore, the disputed domain name at the time of the Complaint filing revolved to a parking page of “amen.fr” which is a brand of the host provider, Register S.p.A. A parking page is typically used as a placeholder for a website and does not offer any real goods or services. The Panel concludes that the Respondent is not using the domain name in connection with an actual and genuine offering of goods or services.

Given these circumstances, the fact that the Respondent failed to submit a response or to provide any evidence of actual possible good-faith use, and appears to have furnished false contact information in light of the courier's inability to deliver the Center's written communication to the information disclosed by the Registrar for the Respondent, the Panel concludes that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith, pursuant to section 3.3 of the [WIPO Overview 3.0](#). Accordingly, 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-france.online>, be transferred to the Complainant.

*/Petra Pecar/*

**Petra Pecar**

Sole Panelist

Date: February 10, 2023