

## **ADMINISTRATIVE PANEL DECISION**

Aldi GmbH & Co. KG, Aldi Stores Limited v. Hasan Erim  
Case No. D2023-0731

### **1. The Parties**

The Complainant is Aldi GmbH & Co. KG, Aldi Stores Limited, Germany, represented by Freeths LLP, United Kingdom.

The Respondent is Hasan Erim, Türkiye.

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

The disputed domain name <aldi-weeklyad.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2023. On February 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 20, 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 (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2023 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 March 9, 2023.

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 March 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2023. The Response was filed with the Center on April 2, 2023.

The Center appointed Cherise Valles as the sole panelist in this matter on April 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

The Complainant in this administrative proceeding is (1) Aldi GmbH & Co. KG, a company registered under the laws of Germany and (2) Aldi Stores Limited, a company incorporated under the laws of England (jointly, “the Complainant”).

Aldi Stores Limited was incorporated in 1988 – its company name was Aldi Limited from 1988 to 1989, and in 1989 the company name was changed to its current name of Aldi Stores Limited. It is a well-known supermarket under common control with Aldi GmbH, and as a licensee under the aforementioned ALDI trademarks.

The Complainant and their connected companies are in the business of grocery retailing. They have more than 5,000 stores around the world and are active in Australia, Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Switzerland, the United Kingdom and the United States of America.

The disputed domain name <aldi-weeklyad.com> was registered on July 5, 2022. Aldi GmbH & Co. KG owns, and Aldi Stores Limited is the exclusive licensee in the United Kingdom of various registered trademarks, which comprise and/or include the sign ALDI (the “trademarks”). Details of a number of such trademarks are set out in Annex 4 of the Complaint. The trademarks cover and have been used in respect of, among other things, a wide range of retail services. The earliest of which was registered in the United Kingdom under UK00002250300 on October 26, 2000.

The Complaint states that the disputed domain name is “currently used to host a website (the “Website”) which features various sponsored links”. However, it appears that at the time of the decision, the disputed domain name resolves to an inactive website.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain name is confusingly similar to the Complainant’s registered ALDI trademark, in light of the fact that it wholly incorporates the Complainant’s mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain name. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name that included its trademarks.

The disputed domain name has been registered and is being used in bad faith.

- The Complainant asserts that the disputed domain name was registered and is being used in bad faith. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use. Furthermore, the Complainant considers that the disputed domain name may have been “registered in order that the Respondent might offer the same for sale to either the Complainants (or their competitors) at a price higher than the cost of registration and in the hope that the parties bid against each other” to secure the disputed domain name.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

In terms of paragraph 4(a) of the Policy, for a Complain to succeed, the Complainant must prove each of the following elements:

- (i) the disputed domain name 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.

The Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

### **A. Identical or Confusingly Similar**

To prove this element, the Complainant must have relevant UDRP rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name incorporates the ALDI trademark in its entirety with the addition of the terms "weekly" and "ad".

Given the Complainant's trademark registration as detailed above, the Panel finds that the Complainant has established its trademark rights in the term ALDI for the purposes of paragraph 4(a)(i) of the Policy.

The Complainant asserts that the disputed domain name is confusing similar to such mark. It argues that the addition of the terms "weekly" and "ad" enhances confusion as it suggests that the disputed domain name "will host a webpage relating to goods or services which are specifically sold by the Complainant[ ]".

As noted above, the disputed domain name incorporates the ALDI trademark in its entirety with the addition of the terms "weekly" and "ad". As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[w]here 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". Thus, the inclusion of the terms "weekly" and "ad" in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's ALDI trademark.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top-Level Domain ("TLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that 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 of the confusing similarity test". In the present case, the TLD ".com" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (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 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 Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (see, for example, *Paris Saint-Germain Football v. Daniel Macias Barajas, International Camps Network*, WIPO Case No. [D2021-0019](#); *Spinrite Inc. v. WhoisGuard, Inc. / Gabriella Garlo*, WIPO Case No. [D2021-0012](#) and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's ALDI trademark in any manner, including in, or as part of, the disputed domain name. The Complaint confirms that "[t]he Complainants' have not licensed or otherwise authorized the Respondent to use the ALDI name or trade mark" (paragraph 12 of the Complaint).

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, he was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name.

The Complainant states that "so far as the Complainants' are aware the Respondent has not (i) used the domain name or any name corresponding to the domain name in connection with a *bona fide* offering of goods or services, (ii) been commonly known by the domain name or (iii) made any legitimate non-commercial or fair use of the domain name as described in the Policy" (paragraph 12 of the Complaint).

In light of the foregoing, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

### C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain name was registered or that it was used in bad faith. The term “bad faith” is “broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant’s mark”. See section 3.1 of the [WIPO Overview 3.0](#). Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) the 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the 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 mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on its website or location.

In the present case, the Complainant’s submissions relate to paragraph 4(b) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors 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. See section 3.1.4 of the [WIPO Overview 3.0](#).

Furthermore, the nature of the disputed domain name, consisting of the Complainant’s trademark with the addition of the terms “weekly” and “ad”, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The disputed domain name currently resolves to an inactive page. Prior WIPO UDRP panels have held that the incorporation of a famous mark in a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *CBS Broadcasting, Inc. v. Dennis Toepfen*, WIPO Case No. [D2000-0400](#).

The Respondent has not participated in the administrative proceeding and has not answered the Complainant’s contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good faith motivation in respect of the registration or use of the disputed domain name in the face of the Complainant’s contentions can be regarded as an indicator of registration or use in bad faith (See, for example, *Novartis AG. v. Mathew French*, WIPO Case No. [DIO2020-0011](#)).

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain name under 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 <aldi-weeklyad.com> be transferred to the Complainant.

*/Cherise Valles/*

**Cherise Valles**

Sole Panelist

Date: May 2, 2023