

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG, Aldi Stores Limited v. Milen Radumilo
Case No. D2023-0750

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 Milen Radumilo, Romania.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 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 (Contact Privacy Inc. Customer 0164713047) and contact information in the Complaint.

The Center sent an email communication to the Complainants on February 22, 2023 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 February 27, 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 February 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on March 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 Complainants are an international grocery retailer. Aldi GmbH & Co. KG owns, and Aldi Stores Limited is the exclusive licensee in the United Kingdom of, various registered trademarks which comprise the mark ALDI, amongst which:

- United Kingdom Trademark No. UK00002250300 for ALDI, registered on March 30, 2001, in International Classes 1, 3, 5, 6, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34, and 35;
- United Kingdom Trademark No. UK00902071728 for ALDI, registered on April 14, 2005, in International Classes 3, 4, 7, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34, and 36;
- United Kingdom Trademark No. UK00902714459 for ALDI, registered on September 5, 2003, in International Classes 35 and 36;
- United Kingdom Trademark No. UK00903360914 for ALDI, registered on June 2, 2010, in International Classes 35, 38 and 39;
- United Kingdom Trademark No. UK00903639408 for ALDI, registered on April 19, 2005, in International Classes 36, 39, 41 and 43;
- United Kingdom Trademark No. UK00906870943 for ALDI, registered on October 19, 2009, in International Classes 7, 9 and 28;
- European Union Trade Mark No. EU002071728 for ALDI, registered on April 14, 2005, in International Classes 3, 4, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34 and 36;
- European Union Trade Mark No. EU002714459 for ALDI, registered on September 5, 2003, in International Classes 35 and 36;
- European Union Trade Mark No. EU003360914 for ALDI, registered on June 2, 2010, in International Classes 35, 38 and 39;
- European Union Trade Mark No. EU003639408 for ALDI, registered on April 19, 2005, in International Classes 36, 39, 41 and 43;
- European Union Trade Mark No. EU006870943 for ALDI, registered on October 19, 2009, in International Classes 7, 9 and 28.

Hereinafter referred to as the “ALDI Trademarks”.

The disputed domain name was registered on June 30, 2022, well after the Complainants secured rights to the ALDI trademarks. The disputed domain name has redirected to what appears to a fake website of “AVIRA Antivirus”, requesting the visitor to extend a license. When the Panel attempted to visit the disputed domain name, it received a firewall warning stating that the domain name is inaccessible due to the risk of malware.

5. Parties' Contentions

A. Complainants

The Complainants assert that each of the three elements specified in paragraph 4(a) of the Policy are met. The three elements being: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights.

The Complainants contend that the disputed domain name is identical or confusingly similar to its trademarks since it incorporates the Complainants' ALDI Trademarks in their entirety. Moreover, the Complainants claim that the addition of the term "bg" only enhances confusion as it appears to refer to specific goods or services sold by the Complainants.

- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainants claim that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainants' rights in the ALDI Trademarks predate the registration of the disputed domain name and the Complainants points out that they did not authorize, license, or permit the Respondent to use any of its trademarks or to apply for or use any domain name incorporating their trademarks. Furthermore, the Complainants claim that the Respondent has not (i) used the disputed domain name or any name corresponding to the disputed 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 noncommercial or fair use of the domain name as described in the Policy.

- (iii) The disputed domain name has been registered and is being used in bad faith.

The Complainants contend that the disputed domain name has been registered and is being used in bad faith. According to the Complainants, it is inevitable that Internet users will be confused into believing that the disputed domain name has some form of association with the Complainants. The registration of the disputed domain name therefore took unfair advantage of the Complainants' rights. Furthermore, the Complainants submit that the disputed domain name has been (or is planning to be) intentionally used to attract internet users, for commercial gain, to any website hosted at the disputed domain name by creating a likelihood of confusion with the ALDI Trademarks, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website of the Respondent. Finally, the Complainants state, there is a distinct possibility that the disputed domain name was registered to offer it 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.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issues

The Panel finds that it has jurisdiction to hear this dispute as the Policy has been incorporated by reference into the applicable registration agreement between the Registrar and the Respondent.

The Panel notes that while the Respondent has been duly notified, it did not reply to the Complainant's contentions within the time period established by the Rules. Pursuant to paragraph 14 of the Rules the Panel shall nonetheless proceed to a decision on the Complainants' complaint and it may draw such inferences from the Respondent's failure to respond as it considers appropriate.

The Panel notes that the Complaint has been filed by two Complainants who have submitted a request for consolidation of their respective complaints. The Panel will allow this as it is satisfied that both Complainants have rights in the registered trademark rights that the Complaint relies on and that they therefore have a "common grievance" against the Respondent.

6.2 Main Issues

Paragraph 4(a) of the Policy requires that in order for its complaint to succeed, the Complainants must prove that the following three elements are present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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 above three elements will each be discussed in further detail below.

A. Identical or Confusingly Similar

The Complainants are required to establish: (1) that they own rights in a trademark or service mark, and, if so, (2) that the disputed domain name is identical or confusingly similar to its trademarks.

Firstly, the Panel finds that the Complainants have clearly evidenced that they own rights in the registered trademark ALDI. The Panel is satisfied with the evidence provided in support of the existence of trademarks for or containing the word "aldi" and Aldi GmbH & Co. KG's ownership of the ALDI Trademarks. It should be noted that paragraph 4(a)(i) of the Policy does not set minimum requirements as to the jurisdictions of the trademarks a complainant relies on, nor as to the number, nature or scope of protection of such trademarks.

Secondly, the Panel finds that the disputed domain name is confusingly similar to the Complainants' trademarks since it incorporates the entirety of the ALDI Trademarks. (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 as well as, *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#), *Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#), and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. [D2000-0113](#)).

As the trademark ALDI is recognizable within the disputed domain names, the addition of the term "bg" does not prevent the Panel's finding of confusing similarity under the first element. It is a well-established view of UDRP panels, with which the Panel agrees, that 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 for instance: *Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd.*, WIPO Case No. [D2001-0110](#); *Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#); *M/s Daiwik Hotels Pvt. Ltd v. Senthil Kumaran S, Daiwik Resorts*, WIPO Case No. [D2015-1384](#); and *BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#)).

Finally, as for the applicable Top Level Domain ("TLD"), i.e. the suffix ".com", the Panel holds that this can be disregarded under the first element confusing similarity test (*CANAL + FRANCE v. Franck Letourneau*,

WIPO Case No. [DTV2010-0012](#); *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); and *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, this Panel finds and concludes that the disputed domain name is confusingly similar to the Complainants' trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that shall demonstrate a right or legitimate interest:

"Any 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."

It is a well-established view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant is generally sufficient to satisfy the requirements under paragraph 4(a)(ii) of the Policy, and the burden of production shifts to the respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name (*AGUAS DE CABREIROA, S.A.U. v. Hello Domain*, WIPO Case No. [D2014-2087](#); *Spigen Korea Co., Ltd., Spigen Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2016-0145](#); and *HubSpot, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Steve Johnson*, WIPO Case No. [D2016-1338](#)).

The Panel notes that the Respondent has not responded to any of the Complainant's contentions, let alone submitted evidence to the contrary, and that, pursuant to paragraph 14 of the Rules, the Panel may draw such inferences from the Respondent's failure to respond as it considers appropriate. In the present case, taking into consideration the Respondent's default, this Panel finds that the Complainants have made out an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, in view of the circumstances of this case, including the following factors.

The Panel finds that there is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. The fact that the disputed domain name incorporates the Complainants' trademarks in its entirety with the additional term "bg", carries a risk of implied affiliation, as the consumers may think that the term "bg" corresponds to "Bulgaria". The Panel agrees with the Complainants that the composition of the disputed domain name falsely suggests affiliation with the Complainants and may indeed confuse consumers about the source of the domain name and whether or not it is sponsored or otherwise endorsed by the Complainants. UDRP Panels have consistently found that such use of a domain name can neither be considered legitimate noncommercial or fair use of the domain name nor a *bona fide* offering of goods or services. Moreover, from evidence provided by the Center and the Panel's independent research, it appears that the disputed domain name distributes malware and is therefore potentially being used for phishing or other fraudulent activities.

In addition, the Complainants assert that the Respondent is not affiliated with the Complainants in any way nor have the Complainants licensed, authorized, or permitted the Respondent to register domain names

incorporating the Complainants' trademarks. The Panel has taken note of the Complainants' confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainants to use their trademarks, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Finally, the Panel agrees with the Complainants that there is no evidence that the Respondent has been commonly known by the disputed domain name.

For all the foregoing reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy non-exhaustively lists four circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the domain name in bad faith:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that the circumstances and evidence presented by the Complainants offer sufficient proof that both the Respondent's registration and current use of the disputed domain name are in bad faith.

The Panel will first discuss the Respondent's registration of the disputed domain name. The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name incorporated the Complainants' ALDI Trademarks. The evidence presented by the Complainants shows that the ALDI Trademarks were registered in different countries well before the registration date of the disputed domain name and that these trademarks are widely known. The Respondent's knowledge of the Complainants' trademarks may already be inferred from these circumstances (*SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#), and *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. [D2007-0950](#)). Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

Furthermore, the Panel believes that the Complainants have also convincingly demonstrated that the disputed domain name has been used in bad faith, namely to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainants' ALDI Trademarks as to the source, sponsorship, affiliation, or endorsement of this website (paragraph 4(b)(iv) of the Policy). The fact that the disputed domain name is confusingly similar to the Complainants' trademarks carries a risk of

implied affiliation. The Panel agrees with the Complainants that this use falsely suggests affiliation with the Complainants and may indeed confuse consumers about the source of the domain name and whether or not it is sponsored or otherwise endorsed by the Complainants. As discussed above under the second UDRP element, this illegitimate activity continues and the use of a domain name for per se illegitimate activity can never confer rights or legitimate interests on a respondent. The record shows that at least for some time, the disputed redirected to a potential malicious website for “AVIRA Antivirus”, which further confirms the bad faith finding. It is also a well-established view of UDRP panels, with which this Panel agrees, that such illegitimate activity is manifestly considered evidence of bad faith (see [WIPO Overview 3.0](#), section and 3.1.4). Moreover, the Respondent’s retention of control of the disputed domain name represents an implied and ongoing threat to the Complainant, which further supports a finding of bad faith.

In light of the above, the Panel finds that the disputed domain name was registered and is being used by the Respondent 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 <aldi-bg.com> be transferred to Aldi Stores Limited.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: April 10, 2023