

ADMINISTRATIVE PANEL DECISION

Linde Plc v. Donald Latimer
Case No. D2023-1137

1. The Parties

The Complainant is Linde Plc, Ireland, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Donald Latimer, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <lindehelium.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 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 amended Complaint on March 17, 2023.

The Center verified that the Complaint together with the amended 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 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2023. The Respondent sent an email on April 3, 2023, expressing its willingness to transfer the Domain Name to the Complainant. On April 11, 2023, the Complainant transmitted by email its request to suspend the proceeding to explore settlement options. The proceeding was therefore suspended until May 11, 2023. On May 11, 2023, the Complainant transmitted by email its request to reinstate the proceeding. Accordingly, the Center notified that the proceeding was reinstated as of May 11, 2023, and the Response due date was May 13, 2023. The Respondent did not

submit any response. Therefore, the Center notified that it would proceed to Panel Appointment on May 16, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on May 30, 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 a public limited company formed under the laws of Ireland with its principal offices in the United Kingdom and United States. It is a leading industrial gas and chemical engineering company with sales of USD 31 billion in 2021. The Complainant employs around 72,000 people globally and serves customers in more than 100 countries worldwide. One of the Complainant's principal gas products is helium.

The Complainant is the proprietor of a number of registered trademarks comprising LINDE, including International trademark number 220883 LINDE registered on June 12, 1959 and European Union trademark number 136671 stylized word mark LINDE registered on November 23, 1999. The Complainant operates a website at "www.linde.com" promoting its products and services.

The Domain Name was registered on September 13, 2018. It resolves to a pay-per-click parking page featuring links to a number of third-party websites including those of competitors of the Complainant. It appears from the email address of the Respondent and the associated domain name and website that they are associated with a seller of helium gas and associated products in the United States.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its LINDE trademark (the "Mark"), that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions but sent the email to the Center referred to above on April 3, 2023, stating that it was unaware it still held the registration for the Domain Name and offering to transfer it to the Complainant.

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its widespread use of the mark over many years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark together with the term “helium”. In the view of the Panel, this addition does not prevent a finding of confusing similarity between the Domain Name and the Mark. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services. The Domain Name resolves to a parking page comprising pay-per-click links to third party websites including websites of competitors of the Complainant. The Respondent has chosen not to respond formally to the Complaint or to take any steps to counter the *prima facie* case established by the Complainant. On the contrary, in its informal email to the Center it indicated that it was willing to transfer the Domain Name in response to the Complaint, but this was not effected. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In light of the nature of the Domain Name, comprising as it does the Complainant’s LINDE mark together with one of the Complainant’s principal gas products, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. In the Panel’s view, the obvious inference is that the Respondent registered the Domain Name for commercial gain with a view to taking unfair advantage of the Complainant’s rights in the Mark, by confusing Internet users into believing that the Domain Name was being operated by or authorized by the Complainant for legitimate purposes related to the Complainant’s activities.

The Domain Name resolves to a pay-per-click parking page featuring links to a number of third-party websites including those of competitors of the Complainant. The Panel finds that this is evidence of bad faith. So far as it may be said that the Respondent has made no active use of the Domain Name, section 3.3 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) notes that, from the inception of the UDRP, panelists have found that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. It depends on the facts of the case, and the failure of the Respondent to provide any evidence of actual or contemplated good-faith use is a relevant factor.

In the circumstances, the Panel finds that the 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 Domain Name <lindehelium.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: June 13, 2023