

## **ADMINISTRATIVE PANEL DECISION**

Aldi GmbH & Co. KG , Aldi Stores Limited v. bo ma  
Case No. D2023-1466

### **1. The Parties**

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

The Respondent is bo ma, United States of America (“United States”).

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

The disputed domain name <aldihalloweenmasks.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 5, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 24, 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 the same date.

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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on May 23, 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 Aldi GmbH & Co. KG and Aldi Stores Limited. Aldi GmbH & Co. KG is the registered proprietor of a number of registered trade marks for marks comprising the ALDI name. Aldi Stores Limited is under common control with Aldi GmbH & Co. KG and is a licensee of those trade mark registrations. The Complainants and their connected companies operate supermarkets. The Complainants' ALDI mark has been recognised as well-known by numerous prior UDRP panels, including in *Aldi GmbH & Co. KG, Aldi Stores Limited v. Cja Jeansson*, WIPO Case No. [D2017-0012](#).

The Complainants own numerous registered trade marks for ALDI, including United Kingdom Trade Mark Registration No. UK00002250300 ALDI in classes 01, 03, 05, 06, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34 and 35 with registration date March 30, 2001.

The Domain Name was registered on September 29, 2023, and resolves to a website featuring various goods purportedly for sale including beauty and cosmetic products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainants contend that the Domain Name is confusingly similar to their well-known ALDI mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and has been used in bad faith given the repute of the Complainants' mark and the use of the Domain Name to sell products such that the public may believe are connected with the Complainants.

##### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

#### **6. Discussion and Findings**

##### **A. Preliminary Issue – Consolidation – Multiple Complainants**

The Panel notes that the Complainants are two entities within a group of related companies that have a specific common grievance: the Complainants both have interests in the ALDI mark, either as owner or licensee, and the Domain Name targets both. It would be equitable and procedurally efficient to allow consolidation in these circumstances (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.11.1).

##### **B. Identical or Confusingly Similar**

The Complainants' ALDI mark is contained within the Domain Name as its first element with the addition of the terms "halloween" and "masks". Where the trade mark is recognisable within the disputed domain name, as in this case, the addition of other terms does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#) at section 1.8). The Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy.

##### **C. Rights or Legitimate Interests**

The Complainants' ALDI mark was registered and well-known long prior to registration of the Domain Name.

The Domain Name is confusingly similar to the Complainants' mark and the Complainants have certified that the Domain Name is unauthorised by them. As discussed in the bad faith section below, the clear intention of the Respondent in using the Domain Name for competing goods was to take advantage of the Complainants' reputation for the Respondent's commercial gain. Such usage of the Domain Name cannot represent a *bona fide* offering of goods or services (*TNT Holdings B.V. v. Sylvie Bona*, WIPO Case No. [D2008-1070](#)).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainants have satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

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

UDRP panels have consistently found that registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus descriptive terms, as in this case) to a famous or well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

The Complainants' well-known ALDI mark has no generic or descriptive meaning that the Respondent might in good faith have sought to adopt, and the mark is highly specific to the Complainants. The Panel's independent research<sup>1</sup> indicates that the Complainants sell Halloween masks. Given the repute of the Complainants' mark and the inclusion of "halloweenmasks" in the Domain Name, which is descriptive of part of the Complainants' business, it is likely that the Respondent had the Complainants in mind when registering the Domain Name and sought to benefit from the repute of the Complainants' mark. The fact that the Domain Name has been used to apparently sell beauty and cosmetic products, which the Complainants also sell in competition, strengthens this conclusion and is itself an indicator of bad faith ([WIPO Overview 3.0](#) at section 3.1.4). Paragraph 4(b)(iv) of the Policy is eminently applicable.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). The Respondent apparently supplied incomplete or false address details in the Whois record for the Domain Name; the Center's courier indicated that a "bad address" was supplied and that the Center's correspondence could not be delivered to the Respondent. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit (*Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#)).

The Complainants have satisfied 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 Domain Name, <aldihalloweenmasks.com>, be transferred to the Complainant Aldi Stores Limited.

/Jeremy Speres/

**Jeremy Speres**

Sole Panelist

Date: June 5, 2023

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<sup>1</sup> Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.