

## **ADMINISTRATIVE PANEL DECISION**

LIDL Stiftung & Co. KG v. Marco Frigatti

Case No. D2023-2982

### **1. The Parties**

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

The Respondent is Marco Frigatti, Albania.

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

The disputed domain names <corsidellalidl.blog>, and <corsidellalidl.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Unknown / Redacted, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 amendment to the Complaint on July 17, 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 July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 8, 2023.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on August 21, 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 the owner of a number of trademark registrations for LIDL in various countries and classes, including:

LIDL (word), European Union Trademark Registration No. 001778679 in class 1 to 5, 7 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on August 22, 2002.

LIDL (figurative), European Union Trademark Registration No. 013192752 in class 1 to 36, and 38 to 44 registered on February 27, 2015.

LIDL (word), German Trademark Registration No. 2006134 in class 3, 5, 8, 11, 16, 18, 21, 28 to 33 registered on November 11, 1991.

LIDL (word), German Trademark Registration No. 30009606 in class 1 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on March 9, 2000.

LIDL (word), International Trademark Registration No. 1541701 in class 1 to 36, and 38 to 44 registered on January 30, 2020 designating Australia, Canada, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Egypt, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine.

LIDL (figurative), International Trademark Registration No. 1537891 in class 1 to 36, and 38 to 44 registered on January 30, 2020 designating Australia, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine.

The disputed domain names <corsidellalidl.blog> and <corsidellalidl.com> were registered by the Respondent on October 20, 2022 and on February 28, 2023. The websites, to which the disputed domain names resolve, reproduce the Complainant's LIDL trademark in combination with the Complainant's color scheme.

## 5. Parties' Contentions

### A. Complainant

The Complainant belongs to the LIDL-Group, a famous global discount supermarket chain based in Germany. The Complainant operates more than 10 000 stores with over 300 000 employees. Currently the Complainant's stores can be found in 31 countries. In Germany, LIDL operates around 3 200 stores. The Complainant offers various additional services such as mobile phone networks and travel services. The Complainant owns various national and international trademark registrations for LIDL, which derived from the name of a co-founder of LIDL supermarkets and has no generic meaning in English or German. LIDL is an inherently distinctive mark and of strong international reputation.

The disputed domain names are confusingly similar to the Complainant's registered LIDL trademark. Both domain names consist of two elements, namely, the Complainant's well-known LIDL trademark and the descriptive Italian prefixes "corsi" and "della" that translate to "courses of" in English. The disputed domain names thus comprise the Complainant's LIDL trademark in its entirety. Where the relevant trademark is recognizable within the disputed domain name, the addition of other descriptive, geographical or meaningless terms does not prevent a finding of confusing similarity (see section 1.8, [WIPO Overview 3.0](#)). The LIDL trademark is well known and of strong reputation. It stands out in the domain names and leads the public to think that the disputed domain names are somehow connected to the owner of the registered

trademark. Internet users will automatically relate to the Complainant when perceiving such domain names and expect offers of the Complainant when accessing the websites.

Furthermore, the additional terms suggest that the domain name holders are economically linked to the Complainant as the combination of the LIDL trademark together with the terms “corsi” and “della” and the generic Top-Level Domains (“gTLDs”) “.com” and “.blog” imply that a customer can expect online courses or lessons being offered by the Complainant.

There is no indication of the Respondent’s use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. The disputed domain name <corsidellalidl.com> resolves into a website in Italian language targeting the Complainant’s trademarks and business and also displaying a logo in the upper left corner which incorporates the LIDL trademark in its entirety. The layout of the website deliberately creates a likelihood of confusion with the Complainant’s marks by displaying the above-mentioned logo and by using the Complainant’s typical color scheme of blue, yellow and red. The Complainant has not authorized the Respondent to use the LIDL trademarks or register the disputed domain name and is not affiliated with the Respondent. On the website, the following text is displayed (translated into English): “Important news! As from 30 September 2023 corsidellalidl.com will no longer be accessible” with further information on where customers “can buy courses at low prices from now”. In addition, by clicking on a green button, Internet users are directed to a third-party website offering online courses in the Italian language for a variety of topics. Most importantly, only previously the domain resolved to a web shop offering different online courses for online purchase, such as “AI Outliers, Full Content Edition”. The same logo, incorporating the LIDL trademark in its entirety, as well as the LIDL color scheme was used in the design of the website. Because of the disputed domain name itself and the design of the web content, which suggests affiliation with the Complainant, the goodwill in the Complainant’s trademarks is being exploited in order to ultimately attract Internet users to the website which is designed to sell online courses by misleading customers into believing they are purchasing offers by the Complainant. Such use does not constitute a *bona fide* offering of goods and services.

At the time of filing the Complaint, the disputed domain name <corsidellalidl.blog> is redirected to the same third-party website as the other disputed domain name <corsidellalidl.com>. However, prior to that, the domain name resolved to a website which displayed an almost identical logo in the upper left corner as the website connected with <corsidellalidl.com>. Again, incorporating the LIDL trademark in its entirety, as well as using the LIDL color scheme in the design of the website, gives the impression that the website provides the corresponding “blog” to the main website found in connection with <corsidellalidl.com>. In particular, the website promoted offers from <corsidellalidl.com> and redirected Internet users to the page under <corsidellalidl.com>, giving the impression that <corsidellalidl.blog> was a supporting channel of the “main page” <corsidellalidl.com>. Because of the disputed domain names themselves and the design of the web content, which suggests affiliation with the Complainant, the goodwill in the Complainant’s trademarks is being exploited to ultimately attract Internet users to the websites, which are designed to mislead Internet users into believing the websites and offers under the disputed domain names originate from the Complainant. Such use does not constitute a *bona fide* offering of goods and services. The same applies with regard to the current link to the third-party website. The Respondent capitalizes on the Complainant’s goodwill in its trademarks and uses the Complainant’s trademarks to generate website traffic. A *bona fide* offering of goods or services can therefore not be recognized.

Internet users will expect a website of the Complainant under the disputed domain names as the disputed domain names incorporate the Complainant’s LIDL trademark in its entirety with the addition of the descriptive terms “corsi” and “della” and the gTLDs “.com” and “.blog”. This composition leads to the suggestion of an endorsement by the Complainant as Internet users expect an official website by the Complainant offering courses or lessons online. Therefore, the disputed domain names cannot be used fairly by the Respondent. The websites under the disputed domain names promoted the sale of online courses to Internet users, while being designed in such a way as to mislead Internet users into believing that the websites were operated by the Complainant or an affiliated company, or with the Complainant’s consent.

Neither the Complainant nor any other company of the LIDL Group has commissioned these offers with the persons responsible for the website content. The disputed domain names cannot be used fairly by the Respondent because they are confusing and diverting.

To the best of the Complainant's knowledge the Respondent is not commonly known by "lidl", "corsi" or "della". No permission to use the LIDL trademark has been granted by the Complainant or any other Company of the LIDL-Group to the Respondent.

The disputed domain names were registered on separate occasions: <corsidellalidl.com> on October 20, 2022, and <corsidellalidl.blog> on February 28, 2023. However, both disputed domain names target the Complainant's trademarks as they contain the Complainant's famous LIDL trademark in its entirety and the websites under both domain names have promoted the same offers of online courses under the same website design, each time depicting a logo that includes the Complainant's figurative LIDL trademark in its entirety, misleading Internet users into believing they are looking at offers by the Complainant. This pattern of conduct clearly demonstrates bad faith. The Respondent used the disputed domain names to attract Internet users to its websites and create the impression that these are official websites of the Complainant or authorized affiliates of the Complainant. The use of the LIDL trademark in both the disputed domain names and the websites themselves show intentional capitalization on the fame and goodwill in the Complainant's trademark in order to attract Internet users to these websites for the Respondent's commercial gain by creating a likelihood of confusion.

The Complainant's use of its trademarks and business activities as a very famous discount supermarket chain predates the registration of the disputed domain names by decades. As regards the notoriety of the name and trademarks of the Complainant, the Complainant further refers to *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-1441](#) in which the panel stated: "Considering the distinctive and well-known character of the Complainant's LIDL trademark, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Name."

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) that the disputed domain name are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

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

According to the submitted evidence, the Complainant is the owner of the registered LIDL trademark. The disputed domain names <corsidellalidl.com> and <corsidellalidl.blog> incorporate the LIDL trademark in its entirety with the addition of the descriptive Italian terms "corsi" and "della" which translates to "courses of" in English. The Complainant's LIDL trademark is readily recognizable in the disputed domain names and the addition of the descriptive prefixes in the disputed domain names do not prevent a finding of confusing similarity. It is standard practice to disregard the gTLD under the confusingly similar test.

Having the above in mind, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's trademark and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant must show, at least *prima facie*, that the Respondent has no rights or legitimate interests with respect to the disputed domain names. The Respondent may establish a right or legitimate interest in the disputed domain names by demonstrating any of the following non-exhaustive circumstances listed in paragraph 4(c) of the Policy:

- (i) that it has made preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services prior to any notice of the dispute; or
- (ii) that it is commonly known by the disputed domain names, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate, noncommercial or fair use of the disputed domain names without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant's trademark registrations for LIDL predate the Respondent's registration of the disputed domain names. The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the trademarks in the disputed domain names.

The evidence indicates that the Respondent has attempted to create an impression of websites created by, belonging to, or endorsed by the Complainant. The Respondent's websites, to which the disputed domain names resolve, reproduce a logo which incorporates the LIDL figurative trademark in its entirety. In addition, the websites display the typical LIDL color scheme of blue, yellow and red. It has been argued by the Complainant that LIDL is not a common dictionary word. On the Respondent's websites, the Respondent offers different online courses for online purchase and provides links to a commercial third-party website. Thus, customers may falsely believe that the commercial offers are presented by the Complainant.

Given the above, the Respondent is not making a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names without Intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case. The Respondent has not submitted any Response or any evidence in this case to demonstrate that the Respondent is the owner of any trademark rights similar to the disputed domain names or that the Respondent is or has been commonly known by the disputed domain names.

By not submitting a response, the Respondent has failed to invoke any circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the disputed domain names. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain names were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registrations to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain names; or
- (ii) circumstances indicating that the disputed domain names were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided there is a pattern of such conduct; or

(iii) circumstances indicating that the disputed domain names were registered primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the disputed domain names have intentionally been used in an attempt to attract, for commercial gain, Internet users to a 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 that website or location.

The Complainant has submitted evidence demonstrating that the Respondent is creating a false impression that the disputed domain names and the corresponding websites are provided by or endorsed by the Complainant. On the websites, to which the disputed domain name resolve, the Respondent is reproducing the Complainant's LIDL trademark in combination with the Complainant's typical color scheme. Thus, given that the Respondent has copied the look and feel of the Complainant's official website, there is an increased risk of confusion as Internet users may more easily be confused or misled into believing that the disputed domain names and websites belong to or are in some way associated with or endorsed by the Complainant. Considering that the Respondent is reproducing the Complainant's trademark without permission on the websites to which the disputed domain names resolve, the Panel finds, in the absence of contrary evidence, that the Respondent knew or should have known of the Complainant's trademarks when the Respondent registered and used the disputed domain names.

Thus, the evidence in the case before the Panel indicates that the disputed domain names have intentionally been used in an attempt to attract, for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant's LIDL trademark as to the source, sponsorship, affiliation, or endorsement of the websites or of a product or service on the websites.

There is no evidence in the case that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain names <corsidellalidl.com> and <corsidellalidl.blog> have 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 disputed domain names, <corsidellalidl.blog>, and <corsidellalidl.com>, shall be transferred to the Complainant.

*/Johan Sjöbeck/*

**Johan Sjöbeck**

Sole Panelist

Date: September 4, 2023