

## **ADMINISTRATIVE PANEL DECISION**

### **LIDL Stiftung & Co. KG v. Changyou Chen**

### **Case No. D2023-3680**

#### **1. The Parties**

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

The Respondent is Changyou Chen, Canada.

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

The disputed domain name <lidlshops.com> is registered with Dynadot, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2023.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on October 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 is a famous global discount supermarket chain based in Germany. It operates more than 10,000 stores with over 300,000 employees. Currently its stores can be found in 31 countries, *inter alia*, in Germany, the Complainant operates around 3,200 stores. The Complainant offers various additional services, e.g., a mobile phone network or travel services.

The Complainant owns LIDL trademark registrations around the world and through ongoing use, including, but not limited to, the following:

- German trademark LIDL registration No. 2006134, registered on November 11, 1991, and covering goods/services in classes: 29, 3, 5, 8, 11, 16, 18, 21, 28, 30, 31, 32, 33; and
- International Trademark LIDL Registration No. 1541701 registered on January 30, 2020, and covering goods/services in classes 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44; and
- European Union Trade Mark LIDL Registration No. 001778679 registered on August 22, 2002, and covering goods/services in classes 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, 42.

The disputed domain name <lidlshops.com> was registered on August 11, 2023, and at the time of filing displayed a parking page containing keywords that lead to sponsored links via pay-per-click ("PPC") links.

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

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

The Complainant contends that the disputed domain name <lidlshops.com> incorporates the LIDL trademark in its entirety with the addition of the term "shops".

The Complainant argues that the addition of the term "shops" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's trademark as the LIDL trademark is recognizable within the disputed domain name.

The Respondent has registered the disputed domain name and is using it as a parking page to connect to the Complainant's competitor's websites.

The Complainant argues that due to the identical reproduction of the LIDL trademark, the public will believe that the disputed domain name comes from the Complainant or is linked to the Complainant.

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy. The Complainant requests that the disputed domain name be transferred to it.

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

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

### A. Identical or Confusingly Similar

The Complainant has provided details of several registered trademarks it owns for LIDL, including the registration in respect of which full details have been provided above, which thereby establish its rights in this trademark.

As a technical requirement of registration, the generic Top-Level Domain (“gTLD”), that is “.com” in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the Complainant’s LIDL trademark in its entirety followed by the term “shops”.

This additional term does not prevent the disputed domain name from being considered confusingly similar to the Complainant’s trademark.

It is well established, in fact, that the addition of terms to a trademark in a domain name does not avoid confusing similarity. See *e.g.*, *eBay Inc. v. eBay Moving / Izik Apo*, WIPO Case No. [D2006-1307](#).

Moreover, it is well established that the gTLD “.com”, being a necessary component of a domain name, may be disregarded for the purpose of comparison under this ground. See, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel finds that the Complainant has satisfied the first element of paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant must demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademarks.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

Past panels have found that in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be claimed by the Respondent.

The Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of paragraph 4(a) of the Policy has, therefore, been met.

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

The Complainant contends that the Respondent's registration and use of the disputed domain name is in bad faith, which the Respondent did not rebut.

On the evidence adduced, it is inconceivable that the registrant of the disputed domain name was unaware of the Complainant's name, trademark, reputation, and goodwill when the disputed domain name was registered.

In *The Nasdaq Stock Market, Inc. v. Hamid Reza Mohammad Pouran*, WIPO Case No. [D2002-0770](#), the panel held: "The Respondent knew or should have known of the existence of the Complainant, [as] the Complainant's trademark [was] widely publicized globally and constantly featured throughout the Internet, and thus, the Panel decides that the disputed domain names were registered in bad faith."

The Respondent, by using the disputed domain name, is intentionally misleading the consumers and confusing them trying to attract them to other websites making them believe that the websites behind those links are associated with or recommended by the Complainant.

The Panel considers, in fact, that the disputed domain name has been used to divert Internet users to other sites offering services that compete with those of the Complainant.

Accordingly, pursuant to paragraph 4(b) of the Policy, this Panel finds that disputed domain name was registered and is being used in bad faith by the Respondent.

On this basis the Panel finds that the Complainant has satisfied the third element of the Policy, paragraph 4(a)(iii).

### **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, <lidlshops.com> be transferred to the Complainant.

*/Eva Fiammenghi/*

**Eva Fiammenghi**

Sole Panelist

Date: November 1, 2023