

## **ADMINISTRATIVE PANEL DECISION**

**Aldi GmbH & Co. KG, Aldi Stores Limited v. Daniel Woods**  
**Case No. D2023-4993**

### **1. The Parties**

The Complainant is Aldi GmbH & Co. KG, Germany, and Aldi Stores Limited, United Kingdom, represented by Freeths LLP, United Kingdom.

The Respondent is Daniel Woods, United States of America.

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

The disputed domain name <aldigirls.com> (the “Disputed 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 November 30, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 30, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 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 December 7, 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 December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent sent an email communication to the Center on November 30, 2023. The Response was filed with the Center on January 1, 2024. On January 10, 2024, the Center notified to the parties the Commencement of Panel Appointment Process.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 15, 2024. 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**

Aldi GmbH & Co. KG, a German company, is the owner of numerous registrations for the trademark ALDI, including for example United Kingdom registration number UK00902071728, registered on April 14, 2005, and European Union registration number 002071728, registered on April 14, 2005. These trademarks are referred to as the “ALDI trademark in this decision. Aldi Stores Limited is the exclusive licensee of the ALDI trademark in the United Kingdom. Nothing turns on the distinction between the two Complainants who will be referred to as the Complainant in this decision unless the context otherwise requires.

The Complainant operates over 5000 retail grocery stores across the world, under the ALDI trademark. It is a well-known and successful business.

The Disputed Domain Name was registered on December 15, 2022. It resolves to a server displaying what appear to be an empty cgi directory structure.

#### **5. Parties’ Contentions**

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

The Complainant alleges that the Disputed Domain Name is confusingly similar to the ALDI trademark, incorporating the ALDI trademark in its entirety, hyphenated and followed by the non-distinctive word “girls”.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the Disputed Domain Name, in particular that, so far as the Complainant is aware, the Respondent has not made any bona fide use of the Disputed Domain Name, and the Complainant has never granted the Respondent permission to use the ALDI trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the Disputed Domain Name was registered in bad faith. The Complainant alleges that the Disputed Domain Name has been (or is planning to be) intentionally used to attract Internet users, for commercial gain, and alleges that the Disputed Domain Name is being used in bad faith.

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

The Respondent says that the Disputed Domain Name is not confusingly similar to the ALDI trademark. He says he has a legitimate interest and is acting in good faith. In particular he says he intends to link the Disputed Domain Name to a fan site promoting the Complainant’s stores because he likes shopping in them. He says “It’s a fan site for Aldi Stores where people who like shopping at Aldi, as I do, can post photos”. He says in doing so he will use different colors and fonts and not use any copyright material belonging to the Complainant. He says he has not yet produced this website because he is busy and he is not a web designer.

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

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between

the Complainant's trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "girls") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Whilst in certain circumstances establishment of a fan or tribute site may establish a legitimate interest the Panel does not consider the Respondent's supposed plans to do this as credible. This is because (a) fan sites do not normally relate to supermarket groups<sup>1</sup>; (b) the Respondent has not provided any credible reason (beyond the vague statement that he likes shopping at Aldi) as to why he would want to devote time and effort to establishing such a site; (c) it seems improbable that other persons would be interested in uploading photos to such a site; (d) he has produced no evidence at all of any preparatory work relating to the creation of such a site; and (e) in any event the addition of the word "girls" to the ALDI trademark makes no sense at all in relation to such a site, and the Respondent has not even attempted to explain his choice of that word. The Panel considers it more likely than not that the Respondent's account is an after the event explanation he has come up with to try to justify his actions. The Panel does not consider that the Respondent has rebutted the inference the Complainant has established.

The Panel finds the second element of the Policy has been established.

---

<sup>1</sup> The Respondent has identified a site "[www.peopleofwalmart.com](http://www.peopleofwalmart.com)" which contains supposedly humorous photographs of people shopping at Walmart, but that strikes the Panel as relatively unusual – most fan sites tend to relate to musicians, celebrities and so on.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel takes the view that although the Disputed Domain Name resolves to some kind of server it is not in substance actually being used. This is also consistent with what the Respondent has said. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy. The Panel is unable to consider any legitimate use the Respondent could have for the Disputed Domain Name, given that "ALDI" is a term which so far as the Panel is aware only relates to the Complainant and its business.

The Panel finds that the Complainant has established the third element 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 Disputed Domain Name <aldigirls.com> be transferred to the Complainant Aldi Stores Limited

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: January 29, 2024