

## ADMINISTRATIVE PANEL DECISION

Linde Plc v. zhang wei

Case No. DCO2024-0042

### 1. The Parties

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

The Respondent is zhang wei, China.

### 2. The Domain Name and Registrar

The disputed domain name <lincare.co> is registered with Sav.com, LLC (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 10, 2024. On June 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 12, 2024, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 2024, 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 June 13, 2024.

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 June 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 10, 2024.

The Center appointed Theda König Horowicz as the sole panelist in this matter on July 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**

The Complainant is part of the Linde Group which has its origins in Germany where it was founded in 1879. The Complainant is a public limited company formed under the laws of Ireland with its principal offices in the United Kingdom and United States of America (“United States” or “U.S.”). It is a leading industrial gas and chemical engineering company active in more than 100 countries worldwide.

The Linde Group is formed by several companies based in Ireland and in the United States including Lincare Holdings Inc. which is a leading respiratory supplier in the United States and which was founded in 1972; Lincare Holdings Inc. focuses on high-quality home respiratory care for patients. Lincare Licensing Inc. is a wholly owned subsidiary of the Complainant which owns the intellectual property rights of the Linde Group.

Through its subsidiary Lincare Licensing Inc., the Complainant is the owner of trademark registrations in many jurisdictions, including for the trademark LINCARE, such as:

- U.S. Trademark LINCARE No. 1605143, in class 42, registered on July 3, 1990;
- European Union Trademark LINCARE No. 015208101, in classes 5, 10, 35, 39, 41, 44, registered on July 19, 2016.

The Complainant operates websites at “www.linde.com” and “www.lincare.com” promoting its products and services and is also present in social media.

The disputed domain name was registered on November 21, 2020. At the time of the filing of the Complaint, and currently, it resolves to a website featuring links to third party websites some of which directly compete with the Complainant.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to its LINCARE trademark since the extension “.co” is not relevant respectively has not to be taken in consideration. The disputed domain name is thus confusingly similar to its LINCARE trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, notably considering that (i) the Respondent is not commonly known by the disputed domain name, (ii) the Respondent was using a privacy Whois service, (iii) the disputed domain name redirects internet users to a website featuring links to third party websites some of which directly compete with the Complainant’s business, (iv) the disputed domain name has been set up by the Respondent with an email enabling MX record so as likely to be using email addresses confusing internet users to believe they are dealing with the Complainant, and (v) the disputed domain name was registered in 2020, significantly after the LINCARE trademarks were filed.

The Complainant additionally contends that the Respondent registered and is using the disputed domain name in bad faith in particular since (i) the Complainant's LINCARE trademark is known internationally, (ii) the Respondent knew or should have known about the Complainant when registering a domain name which is confusingly similar to the Complainant's trademark LINCARE and to its domain name <lincare.com> (iii) the Respondent tried to pass himself off as the Complainant notably by creating active MX records associated with the disputed domain name which enables the creation of email addresses, (iv) the Respondent is engaged in a pattern of cybersquatting.

## **B. Respondent**

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

## **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 the LINCARE trademark 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Moreover, the nature of the disputed domain name carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The Panel further finds, that the use of the disputed domain name to host a parked page comprising pay per click ("PPC") links which directly compete with the Complainant cannot be considered a bona fide offering. [WIPO Overview 3.0](#), section 2.9.

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

### **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.

In the present case, the Panel notes that, in light of the composition of the disputed domain name and the notoriety of the Complainant's trademark, the Respondent could not have ignored the existence of the prior LINCARE trademark and domain name when registering the disputed domain name which is identical to the Complainant's LINCARE trademark. Furthermore, the Complainant has shown that the disputed domain name was linked to a webpage promoting third party website some of which being in direct competition with the Complainant. The Complainant has also shown that the Respondent is known as having unduly registered many domain names containing third parties' trademarks and has, thus, engaged in a pattern of cybersquatting.

All these elements suffice to establish the bad faith registration and use of the disputed domain name by the Respondent.

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 <lincare.co> be transferred to the Complainant.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: July 30, 2024