

## **PANEL DECISION**

LIDL Stiftung & Co. KG v. Sebastian Roche  
Case No. DEU2022-0037

### **1. The Parties**

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

The Respondent is Sebastian Roche, France.

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

The Registry of the disputed domain name <lidl-produits.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Combell NV.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2022. On November 24, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On November 25, 2022, the Registry 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 .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 2, 2022. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 23, 2022.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on January 5, 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 ADR Rules, Paragraph B(5).

#### 4. Factual Background

The Complainant is a global discount supermarket chain based in Germany. The Lidl group operates more than 10,000 stores with over 300,000 employees. Currently, the Complainant's stores can be found in 31 countries. The Complainant also offers a mobile phone network and travel services.

The Complainant owns various registrations for the term mark LIDL in various countries, among which the following:

Country	Reg. No.	Reg. Date	Classes
Germany	2006134	November 11, 1991	3, 5, 8, 11, 16, 18, 21, 28, 30, 31, 32 and 33
Germany	30009606	March 9, 2000	1, 2, 3, 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 and 42
Germany	30567731	February 9, 2006	35, 36, 39, 40, and 41
Germany	302014027081	August 14, 2014	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43 and 44
Germany	302019018984	September 18, 2019	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43 and 44
European Union	001778679	August 22, 2002	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 and 42
European Union	004746327	December 7, 2006	35, 36, 39, 40 and 41
European Union	006460562	October 15, 2008	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 41 and 42
European Union	013192745	February 27, 2015	1, 2, 3, 4, 5, 6, 7, 8, 9, 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 and 44
European Union	018192764	December 8, 2020	1, 2, 3, 4, 5, 6, 7, 8, 9, 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 and 44

The Complainant also owns and uses the following domain names consisting of the LIDL trademark: <lidl.com>, <lidl.de>, <lidl.co.uk>, <lidl.fr> and <lidl.ie>.

The disputed domain name was registered on August 3, 2022 and is passively held.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its LIDL trademark as it incorporates it entirely and the addition of the term "produits" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the disputed domain name has been registered by the Respondent with no rights or legitimate interests. The disputed domain name resolves to an inactive website and such use cannot amount to a noncommercial or fair use in view of the fact that the disputed domain name is confusingly similar to the Complainant's trademark and likely to divert potential consumers. Furthermore, the Respondent is not commonly known by the disputed domain name and, to the best of the Complainant's knowledge, does not own any registration for a LIDL trademark. The Complainant never authorized the Respondent to make use of its mark. Lastly, there is no indication of the Respondent's use of the disputed domain name or a name corresponding to the disputed domain name in connection with offering of goods and services, or of demonstrable preparations to do so.

In respect of bad faith, the Complainant asserts that the LIDL trademark is distinctive and enjoys strong reputation in view of its widespread and longstanding use in connection with a very famous discount supermarket chain. Therefore, the Respondent could not ignore the Complainant and its well-known trademark and no conceivable legitimate use of the disputed domain name is possible in this case.

In the Complainant's view, the registration of the disputed domain name has several points of contact with the registration of the domain name <lidl-snc.eu>. In particular, both domain names have the same registration date, the same Registrar and display information on the Registrant indicating a concealment of identity. Therefore, the Complainant maintains that the Respondent has engaged in a pattern of conduct of registering domain names comprising the LIDL trademark without rights or legitimate interests, and in bad faith.

Moreover, according to the Complainant, the disputed domain name has been primarily registered for the purpose of fraudulent email scams. Based on previous similar cases, the Complainant considers that the Respondent could use the disputed domain name to send fraudulent emails. By these emails, the sender would attempt to impersonate the Complainant or its affiliated companies and lure the recipients into advance deliveries that are never paid. In addition, the Complainant affirms that a website operated under the disputed domain name could be used for fake shops, either to steal the customer's data, or to engage in other fraudulent actions. In this connection, the Complainant notes that the Respondent's email address is "[...].@consultant.com" and that the domain name <consultant.com> is frequently used to create fake email addresses. It appears from blogs and Internet articles that there is a phishing scam scheme connected to "[...].@consultant.com" email addresses.

Lastly, the Complainant points out that although the disputed domain name resolves to an inactive website, this circumstance cannot prevent a finding of bad faith for the reasons mentioned above.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law**

The Panel is satisfied that the Complainant has provided sufficient evidence of ownership of the LIDL trademark, registered in the European Union and in Germany for various classes of goods and services. The Panel finds that the disputed domain name is confusingly similar to the Complainant's LIDL trademark since it is fully reproduced in the disputed domain name and is followed by a hyphen and the term "produits", which is the French equivalent of "products". It is generally recognized that where the relevant trademark is clearly identifiable within a domain name, the addition of other terms, such as the term "produits" in this case, cannot prevent a finding of confusing similarity. As the Complainant's mark is evident within the disputed domain name, the Panel finds that the same is confusingly similar to the LIDL trademark as per the purpose of Paragraph B(11)(d)(1)(i) of the ADR Rules.

## B. Rights or Legitimate Interests

Under Paragraph B(11)(e) of the ADR Rules, a respondent may demonstrate its rights or legitimate interests in the domain name for purposes of Paragraph B(11)(d)(1)(ii) by showing any of the following circumstances, in particular but without limitation: (1) prior to any notice of the dispute, the respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; (2) the respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or European Union law; (3) the respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

In this case, the Complainant affirms that it did not authorize the Respondent to include its LIDL trademark in the disputed domain name. The disputed domain name does not resolve to an active website; therefore, the Respondent has not used it in connection with offering of goods or services, nor has provided any evidence demonstrating preparations to do so. In addition, the Panel has found no evidence in the file showing that the Respondent has been commonly known by the disputed domain name, even in the absence of a right recognized or established by national and/or European Union law.

The Respondent does not appear to be making a legitimate and noncommercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law. The disputed domain name incorporates the well-known trademark LIDL followed by a hyphen and the French term “produits”. The addition of this term “produits” to the LIDL trademark in the disputed domain name contributes to deceive consumers, who, in searching online for the Complainant, could believe that the disputed domain name belongs to the Complainant and leads to a website where to find the Complainant’s products. Furthermore, the nature of the disputed domain name, comprising the Complainant’s trademark in its entirety, carries a risk of implied affiliation (See section 2.5.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Complainant suggests that the Respondent has engaged in a pattern of conduct, as there are close connections between the registration of the disputed domain name and that of the domain name <lidl-snc.eu>, which is the subject of another ADR dispute. This Panel is the same Panel that has dealt with the ADR proceeding relating to the domain name <lidl-snc.eu> (see *LIDL Stiftung & Co. KG v. Lawlor Derek*, WIPO Case No. [DEU2022-0036](#)). Indeed, the Panel considers that there are some similarities between these two cases, such as the same registration date for both domain names, the same Registrar, the same registrants’ French nationality, the same country code top-level domain, and the same type of domain name, consisting of the trademark LIDL followed by a hyphen and an acronym/term relating to France, “snc”, which stands for “société en nom collectif” (French for partnership), in one case, and the term “produits” in the other case. In addition, the use of the two domain names is similar to a certain extent: while <lidl-snc.eu> leads to the Registrant’s parking page, the domain name <lidl-produits.eu> is inactive. All considered, although the names of the Registrants of the domain names <lidl-snc.eu> and <lidl-produits.eu> are apparently different, the Panel believes that some form of connection exists between them. Therefore, it is more likely than not, that the Respondent has engaged in a pattern of registering domain names corresponding to the Complainant’s LIDL trademark.

For all reasons mentioned above, the Panel concludes that the disputed domain name has been registered by the Respondent without rights or legitimate interests and that the Complainant has successfully established the circumstance set forth in Paragraph B(11)(d)(1)(ii), of the ADR Rules.

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<sup>1</sup> Considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (the “UDRP”), the Panel also refers to UDRP case law and analysis, where appropriate.

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

There is no need to separately address bad faith registration or use, in view of the Panel's finding that the Respondent lacks rights or legitimate interests in the disputed domain name. However, for the sake of completeness, the Panel will also briefly examine the registration and/or use of the disputed domain name in bad faith.

The Panel agrees with the Complainant that the Respondent knew or should have known the Complainant and the LIDL trademark at the time of the registration of the disputed domain name. There is no doubt that the trademark LIDL is highly distinctive and enjoys strong reputation, due to its widespread and longstanding use. The Respondent's location is in France and the Complainant operates in the whole European Union, including in France. The disputed domain name includes the identical trademark LIDL followed by a hyphen and the French term "produits". The LIDL trademark is recognizable in the disputed domain name. The term "produits" (products in English) is closely related to the Complainant's activity, which is that of selling different kinds of products.

The Respondent provided as contact email address an email ending with the string "[...].@consultant.com", which, as evidenced by the Complainant, is often used for fraudulent activities. Therefore, it is possible that the Respondent registered the disputed domain name to lure Internet users looking for the Complainant with some malicious intent.

The fact that the Respondent is passively holding the disputed domain name cannot prevent a finding of bad faith, as no legitimate use of the disputed domain name is conceivable in light of the strong reputation that the LIDL mark enjoys. Moreover, the Respondent seems to have targeted the Complainant and its well-known trademark as it appears to have engaged in a pattern of registering domain names including the Complainant's trademark as thoroughly discussed above to impersonate the Complainant and mislead Internet users for some type of illegitimate activity.

In light of the above, the Panel concludes that the Complainant has successfully proved that the Respondent has registered and is being using the disputed domain name in bad faith, according to Paragraph B(11)(d)(1)(iii), of the ADR Rules

### **7. Decision**

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <lidl-produits.eu> be transferred to the Complainant<sup>2</sup>.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: January 19, 2023

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<sup>2</sup> (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) As the Complainant LIDL Stiftung & Co. KG, is established in Germany, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517. .