

## **ADMINISTRATIVE PANEL DECISION**

**Aldi GmbH & Co. KG, and Aldi Stores Limited v. Mr Samm123 Adinn**  
**Case No. D2023-1309**

### **1. The Parties**

The Complainants are Aldi GmbH & Co. KG, Germany, and Aldi Stores Limited, United Kingdom (collectively referred to as “the Complainant”) represented by Freeths LLP, United Kingdom.

The Respondent is Mr Samm123 Adinn, United Kingdom.

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

The disputed domain name <aldigrocer.com> (the “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 March 27, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 29, 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 March 30, 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 March 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2023. The Respondent did not submit any response. However, an email communication was received from a third party on April 3, 2023, claiming their address was used by the Respondent. Accordingly, the Center notified the Commencement of Panel Appointment Process on April 21, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on April 25, 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 following facts are undisputed.

The first Complainant, Aldi GmbH & Co. KG, is the owner of numerous trademark registration for the element "aldi". Moreover, it is the owner of the second Complainant, which in turn is the exclusive licensee of the trademark registrations of the first Complainant.

Together with its connected companies, the Complainant is an international market leader in the grocery retailing sector. The Complainant has more than 5,000 groceries stores and is active in many different countries, including but not limited to Australia, Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Switzerland, and the United States of America.

The Complainant is the owner of several trademark registrations comprising of the word element "aldi", including, but not limited to, the United Kingdom trademark registration for ALDI (word mark), with registration no. UK00002250300 and with a registration date of March 30, 2001, for goods and services in classes 1, 3, 5, 6, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34, and 35 (hereinafter referred to as the "ALDI Trademark").

The Domain Name was registered on October 11, 2022, and does not resolve to any active website.

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

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

Insofar as relevant for deciding this matter, the Complainant contends the following.

The Domain Name is confusingly similar to the ALDI Trademark. More specifically, the Domain Name consists of the ALDI Trademark in its entirety to which the Respondent solely added the term "grocer", which directly relates to the services provided under the ALDI Trademark.

Moreover, the Respondent has no rights nor legitimate interests in the Domain Name, whereas the Respondent is not commonly known by the Domain Name. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use the ALDI Trademark or to register a domain name incorporating the ALDI Trademark. Lastly, there is no legitimate noncommercial or fair use of the Domain Name whereas the Domain Name does not resolve to an active website.

Moreover, the Respondent has registered and uses the Domain Name in bad faith. The Respondent registered the Domain Name with prior knowledge of the ALDI Trademark in order to take predatory advantage of the Complainant's reputation. By doing so the Registrant intentionally disrupts the Complainant's business, whereas the Domain Name attempts to attract or mislead Internet users for commercial gain. In addition to this, the Domain Name is not being used for any genuine activities, considering the fact that the Domain Name resolves to an inactive website.

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

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

## 6. Discussion and Findings

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

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

### A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the ALDI Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the ALDI Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the ALDI Trademark. The Domain Name <aldigrocer.com> is comprised of the ALDI Trademark in its entirety and the term "grocer".

The ALDI Trademark is the dominant element of the Domain clearly recognizable in the Domain Name and as set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element.

Therefore, the Panel is satisfied that the first element of the Policy is met.

### B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or

- (iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

First of all, there is no evidence that “aldigrocer” is the Respondent’s name or that the Respondent is commonly known under the aforementioned name. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or has ever been authorized by the Complainant to register or use the ALDI Trademark, or to apply for or use any domain name incorporating the ALDI Trademark.

Furthermore, the Complainant’s assertions have not been rebutted by the Respondent to indicate whether it has any rights or legitimate interests in the Domain Name. There was also no evidence put forward by the Respondent to indicate that the Respondent was licensed or authorized by the Complainant to use the ALDI Trademark.

In addition to this, the Respondent does not seem to make any use of the Domain Name as the Domain Name does not resolve to an active website. Further adding to this, the Respondent has failed to put forward any evidence that would support the claim that the Respondent has used or made preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

In summary, the Panel considers that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

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

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the ALDI Trademark and the Complainant’s activities are well-known, if not famous, also in the country where the Respondent purports to be located. The Complainant is owner of numerous trademarks which were used and registered many years before the Domain Name was registered. Accordingly, in the Panel’s view, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. This is also supported by the fact that in the Domain Name the Respondent included the term “grocer”, which refers to the main activity of the Complainant.

The fact that the Domain Name does not resolve to an active website, does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 [WIPO Overview 3.0](#)).

A finding of registration and use in bad faith is also supported by the fact that the Respondent registered the Domain Name whilst using the address of a third party, and it can, therefore, be assumed that the Respondent has provided false information when registering the Domain Name.

Finally, although the lack of a formal or substantive response by the Respondent to the Complaint, and also not responding to the cease and desist letter and reminders, as such cannot by itself lead to the conclusion that there is registration and use in bad faith, this nonetheless supports for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

Therefore, the Panel is satisfied that the third element of the Policy is met.

## **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 <aldigrocer.com> be transferred to the Complainant.

*/Willem J.H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: May 9, 2023