

## **ADMINISTRATIVE PANEL DECISION**

Aldi GmbH & Co. KG, Aldi Stores Limited v. gombo gate

Case No. D2023-1464

### **1. The Parties**

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

The Respondent is gombo gate, United Kingdom.

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

The disputed domain name <aldi-groceries.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on April 11, 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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 5, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on May 19, 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**

Aldi GmbH & Co. KG, a German company, is the owner of numerous registrations of the trademark ALDI, including United Kingdom registration number UK00902071728, registered on April 14, 2005 and European Union registration number 002071728, registered on April 14, 2005. Aldi Stores Limited is the exclusive licensee of the ALDI trademark in the United Kingdom.

The Complainants and their connected companies operate over 5000 retail stores across the world, under the ALDI trademark. The sale of grocery products form an important part of the business in these stores.

The disputed domain name was registered on October 16, 2022.

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

##### **A. Complainants**

The Complainants allege that the disputed domain name is confusingly similar to the ALDI trademark, incorporating the ALDI trademark in its entirety, hyphenated and followed by the descriptive or non distinctive word "groceries".

The Complainants allege that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, so far as the Complainants are aware, the Respondent has not made any *bona fide* use of the disputed domain name, and the Complainants have never granted the Respondent permission to use the ALDI trademark in connection with the registration of a domain name, or otherwise.

The Complainants allege that the disputed domain name was registered in bad faith.

The Complainants allege that the disputed domain name has been (or is planning to be) intentionally used to attract Internet users, for commercial gain, and allege that the disputed domain name is being used in bad faith.

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

The Respondent did not reply to the Complainants' contentions.

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

##### **A. Confusing similarity**

The Panel finds that the Complainants have rights to the trademark ALDI for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the ".com" gTLD to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainants' ALDI trademark is clearly recognizable in the disputed domain name, rendering the

disputed domain name confusingly similar to the Complainants' trademark. The addition of a hyphen followed by the word "groceries" to the trademark ALDI does not detract from this finding.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name.

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

The Panel considers that the Complainants' allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainants' ALDI trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

Since the decision in *Telstra Corporation v Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), it has become well-established in subsequent decisions that non-use of a disputed domain name does not evade the finding of use in bad faith if a complainant can demonstrate that any use of the domain name would be likely to automatically damage the complainant's legitimate interests. The circumstances of the present case are such that implied affiliation with the Complainants' would automatically arise with any use of the disputed domain name. In these circumstances, the Panel considers that a finding of use in bad faith is appropriate, and so finds.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(iii) 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, <aldi-groceries.com>, be transferred to the Complainant, Aldi Stores Limited.

/George R. F. Souter/

**George R. F. Souter**

Sole Panelist

Date: June 2, 2023