

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. Milen Radumilo

Case No. D2023-2848

1. The Parties

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

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <mylidl.net> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2023. On July 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 (Contact Privacy Inc. Customer 0166910107) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 July 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 July 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on August 22, 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 Complainant is a global discount supermarket chain based in Germany. The Complainant is the owner of a number of trademark registrations for LIDL in various countries and classes, including:

- LIDL (word), European Union Trademark Registration No. 001778679 in class 1 to 5, 7 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on August 22, 2002;
- LIDL (figurative), European Union Trademark Registration No. 013192752 in class 1 to 36, and 38 to 44 registered on February 27, 2015.;
- LIDL (word), German Trademark Registration No. 2006134 in class 3, 5, 8, 11, 16, 18, 21, 28 to 33 registered on November 11, 1991;
- LIDL (word), German Trademark Registration No. 30009606 in class 1 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on March 9, 2000;
- LIDL (word), International Trademark Registration No. 1541701 in class 1 to 36, and 38 to 44 registered on January 30, 2020, designating Australia, Canada, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Egypt, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine; and
- LIDL (figurative), International Trademark Registration No. 1537891 in class 1 to 36, and 38 to 44 registered on January 30, 2020, designating Australia, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine.

The disputed domain name <mylidl.net>, was registered by the Respondent on March 31, 2023. The disputed domain name redirects Internet users to websites that display pay-per-click (“PPC”) links for online-retailers and pornographic material.

5. Parties’ Contentions

A. Complainant

The Complainant belongs to the LIDL-Group, a famous global discount supermarket chain based in Germany. The Complainant operates more than 10 000 stores with over 300 000 employees. In Germany, LIDL-Group operates around 3,200 stores. Currently the Complainant’s stores can be found in 31 countries. The Complainant offers various additional services such as mobile phone networks and travel services. The Complainant owns various national and international trademark registrations for LIDL, which derived from the name of a co-founder of LIDL supermarkets and has no generic meaning in English or German. LIDL is an inherently distinctive mark and of strong international reputation.

The disputed domain name is confusingly similar to the Complainant’s LIDL trademark as it consists of two elements, namely the Complainant’s trademark in its entirety and the additional term “my”. Where the relevant trademark is recognizable within the disputed domain name, the addition of other descriptive, geographical or meaningless terms does not prevent a finding of confusing similarity (see section 1.8, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The LIDL trademark is well known and has a strong reputation. The trademark stands out in the disputed domain name and leads Internet users to believe that the disputed domain name is somehow connected to the Complainant. Furthermore, the additional term in the present case, suggests that the Respondent is linked to the Complainant, as the combination of the LIDL trademark with the additional term “my”, and the generic Top-Level Domain (“gTLD”) “.net”, implies a personalized or customer-centric aspect, indicating that the website might offer the Complainant’s products tailored to individual LIDL customers’ needs or offering a personal customer account.

There is no indication of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The disputed domain name redirects Internet users to "ww38.mylidl.net", a PPC parking page that includes different advertisements. At the bottom of the page, Internet users can click on the field "Diese Domain kaufen", which translates from German to English to "buy this domain", and are then further redirected to a website where the disputed domain name is currently offered for direct sale for USD 688. Occasionally, the disputed domain does not redirect to the above mentioned PPC parking page, but to third party websites, such as retailers, for instance <otto.de> or <tom-tailor.de>, but also to other third party websites with fraudulent offers showing pornographic images.

The use of an infringing domain name as a parking page does not constitute legitimate use (see section 3.3, [WIPO Overview 3.0](#)). Moreover, the advertising content on the website, which the disputed domain name resolves to, is provided by "Team Internet AG", a company that supplies domain holders with the technological infrastructure to monetize the domain, which proofs that these various advertisements represent PPC links. The use of a domain name to host a parking page comprising of keywords that lead to pay-per-click links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of a complainant's mark or otherwise mislead Internet users (see section 2.9, [WIPO Overview 3.0](#)). By using the disputed domain name as a PPC parking page, the Respondent has clearly been capitalizing on the Complainant's goodwill in its trademarks. The LIDL trademarks are well known and of strong reputation. The mere presence of the Complainant's trademark in a domain name will generate increased website traffic and therefore increase PPC revenue. Due to the Complainant's trademarks' reputation, the use of a PPC parking page can never constitute a *bona fide* offering of services or goods.

The same applies with regard to the direct links to third party websites. The Respondent capitalizes on the Complainant's goodwill in its trademarks and uses the Complainant's trademarks to generate website traffic. The Respondent furthermore increases website traffic in favor of companies that compete with LIDL in the same line of business and hence even damages LIDL economically. A *bona fide* offering of goods or services can therefore not be recognized. The Complainant has requested the domain provider to permanently block or delete the website and content to which the disputed domain name resolves.

To the best of the Complainant's knowledge, the Respondent is not commonly known by the terms "lidl", "my" or "mylidl". The Complainant is monitoring its trademarks and would be aware if there were any relevant trademark or trade name rights of third parties. No permission for the Respondent to use the LIDL trademark has been granted by the Complainant or any other Company of the LIDL-Group.

The Respondent is offering the domain name publicly on GoDaddy for direct sale for USD 688. The price of USD 688 exceeds the Respondents reasonable out-of-pocket costs. The registration costs for a similar gTLD ".net" domain name with GoDaddy amounts to around USD 15. This conduct shows that the Respondent registered the disputed domain with the intent of selling it for profit by exploiting the Complainant's goodwill in his trademarks.

The Complainant's use of its trademarks and business activities as a very famous discount supermarket chain predates the registration of the disputed domain name by decades. As regards the notoriety of the name and trademarks of the Complainant, the Complainant further refers to *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-1441](#). The website, to which the disputed domain name resolves, displays a parking page containing keywords that lead to sponsored links via PPC links. The Respondent aims to generate revenue and benefits by utilizing the Complainant's trademark, in order to gain more website traffic and thus ensuring greater income. By creating this likelihood of confusion with the Complainant's trademark and provoking the effect of being affiliated with the Complainant, the Respondent intentionally attempted to attract Internet users for commercial gain.

B. Respondent

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

6. Discussion and Findings

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

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the submitted evidence, the Complainant is the owner of the registered LIDL trademark. The disputed domain name incorporates the LIDL trademark in its entirety with the addition of the prefix “my”. The Complainant’s LIDL trademark is readily recognizable in the disputed domain name and the additional term does not prevent a finding of confusing similarity (see sections 1.7 and 1.8, [WIPO Overview 3.0](#)).

Having the above in mind, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s LIDL trademark and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to the notice of the dispute; or
- (ii) that the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant’s trademark registrations for LIDL predate the Respondent’s registration of the disputed domain name. The Complainant has not licensed, approved, or in any way consented to the Respondent’s registration and use of the trademark in the disputed domain name. There is no evidence in the case file indicating that the Respondent has used or made any preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services prior to this proceeding. On the contrary, the Complainant has submitted evidence showing that the Respondent is using the disputed domain name, which is confusingly similar to the Complainant’s trademark, to display sponsored commercial PPC links competing with or capitalizing on the Complainant’s trademark. The submitted evidence also demonstrates that the disputed domain name has been redirected to third-party websites, such as online retailers and websites displaying pornographic material. The Panel finds that the nature of the disputed domain name (incorporating the Complainant’s trademark in its entirety, with the additional term “my” (which can refer to an Internet user account with the Complainant)), may be seen as impersonating or suggesting sponsorship or endorsement by the Complainant.

Although given the opportunity, the Respondent has not rebutted the Complainant’s *prima facie* case. The Respondent has not submitted any evidence indicating that it is the owner of any trademark, or that it is commonly known by the disputed domain name. Furthermore, there is no evidence indicating that the Respondent intends to make a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

The Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case file that refutes the Complainant's submissions, and the Panel finds that the Complainant has also proven the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The Panel notes that the Complainant's trademark is considered distinctive and well known according to UDRP decisions cited by the Complainant. As previously mentioned, the Complainant's trademark registrations for LIDL predate the registration of the disputed domain name which comprises the Complainant's trademark in its entirety. The Complainant has submitted evidence demonstrating that the Respondent is offering the disputed domain name for sale for an amount that exceeds the Respondent's reasonable out-of-pocket costs. Out-of-pocket costs include the costs of obtaining, registering, and maintaining a domain name. Registering or acquiring a domain name for the purpose of selling, renting or otherwise transferring the domain name registration to a trademark owner for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name is an indication of registration and use of the relevant domain name in bad faith. Considering the above, the Panel finds it inconceivable that the Respondent coincidentally registered the disputed domain name without any knowledge of the Complainant and its trademarks.

Furthermore, the Complainant has provided evidence that the disputed domain name resolves to a website displaying sponsored commercial PPC links competing with or capitalizing on the Complainant's LIDL trademark. It has also been demonstrated by the Complainant that the disputed domain name, at times, has been redirected to third-party websites, such as online retailers and websites displaying pornographic material. Thus, the circumstances in the present case indicate that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

In the absence of any evidence or response from the Respondent, the Panel is persuaded on the balance of probabilities that the Respondent registered and used the disputed domain name with the Complainant's trademark and business in mind.

There is no evidence in the case file that refutes the Complainant's submissions and the Panel concludes that the Complainant has proved the requirements under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and used in bad faith.

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, <mylidl.net> shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: September 5, 2023