

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. 苏俊荣 (Junrong Su)
Case No. D2023-3965

1. The Parties

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

The Respondent is 苏俊荣 (Junrong Su), China.

2. The Domain Names and Registrar

The disputed domain names <lidl-supermarkets.com> and <lidlsupermarkets.com> are registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2023. On September 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint (Redacted for privacy). The Center sent an email communication to the Complainant on September 25, 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 in English on September 28, 2023.

On September 25, 2023, the Center also informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On September 28, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 30, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on November 23, 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 part of the LIDL-Group, a global discount supermarket chain based in Germany. The LIDL-Group operates more than 10,000 stores with over 300,000 employees. Currently its stores can be found in 31 countries. The name LIDL is derived from the name of a co-founder of LIDL supermarkets and has no meaning in English or German.

The Complainant has various national and international trade mark registrations for LIDL around the word including the following:

- German Trade Mark Registration No. 2006134 for LIDL registered on November 11, 1991
- German Trade Mark Registration No. 30009606 for LIDL registered on March 9, 2000
- International Trade Mark No. 974355 designating China for LIDL registered on May 9, 2008

(together, individually and collectively referred to as the "Trade Mark").

The Complainant operates various domain names which incorporate the Trade Mark including <lidl.de>, <lidl.com> and <lidl.es>.

The Respondent appears to be based in China. The disputed domain names were both registered on August 29, 2023. The disputed domain names are inactive.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain names, and that the disputed domain names were registered and are being used in bad faith. The Complainant requests transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for the following main reasons:

- The disputed domain names are in Latin and not Chinese characters;
- The Complainant is based in Germany and has no familiarity with a foreign language;
- The Complainant having to translate the Complaint into Chinese would unfairly disadvantage and burden the Complainant in terms of costs and delay the proceeding and adjudication of this matter.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. 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 Trade Mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trade Mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the other term here, "supermarkets" and in the case of one of the disputed domain names, the hyphen symbol, may bear on assessment of the second and third elements, the Panel finds the addition of such term and symbol does not prevent a finding of confusing similarity between the disputed domain names and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

C. 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.

While 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 often impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

Moreover, the nature of the disputed domain names is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

D. 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 the disputed domain names fully incorporate the Trade Mark with the additional term “supermarkets” that refers to the Complainant’s business, indicating that the Respondent had actual knowledge of and was targeting the Complainant and the Trade Mark when registering the disputed domain names. The Panel also notes that the disputed domain names are inactive. Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Trade Mark, the composition of the disputed domain names and lack of a response from the Respondent and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under 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 names <lidl-supermarkets.com> and <lidlsupermarkets.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: December 18, 2023