

## **ADMINISTRATIVE PANEL DECISION**

### **LIDL Stiftung & Co. KG v. Lards Renoud**

### **Case No. D2022-0709**

#### **1. The Parties**

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

The Respondent is Lards Renoud, United Kingdom.

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

The disputed domain names <b2b-lidl.online>, <fr-lidl.online> and <fr-lidl.store> (the “Domain Names”) are registered with Ligne Web Services SARL (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2022. On March 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On March 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2022 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 10, 2022.

The Registrar also indicated that the language of the Registration Agreement was French. The Complaint was filed in English. The Center sent an email communication to the Complainant on March 8, 2022, inviting the Complainant to provide sufficient evidence of an agreement between the Parties for English to be the language of proceeding, a Complaint translated into French, or a request for English to be the language of proceedings. The Complainant confirmed its request for English to be the language of proceedings on March 10, 2022. The Respondent did not submit any response.

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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 11, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on April 26, 2022. 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 large supermarket chain headquartered in Germany.

The Complainant is the owner of several trade marks for the term "lidl", including the following:

- European Union Trade Mark LIDL No. 001778679, registered on August 22, 2002.

The Complainant is also the owner of several domain names reflecting its trade mark such as <lidl.fr> and <lidl.co.uk>. The Complainant also owns the generic Top-Level-Domain ("gTLD") ".lidl".

All Domain Names were registered on January 5, 2022. At the time the Complaint was filed, the Domain Names did not resolve to active websites but instead they resolved to the Registrar's suspension page. At the time of the Decision, the Domain Names did not resolve to any website.

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

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

The Complainant contends that the Domain Names are confusingly similar to the LIDL trade mark in which the Complainant has rights as the Domain Names incorporate the entire LIDL trade mark with the mere addition of an hyphen "-" and (i) the country identifier "fr" for France for two of the Domain Names and (ii) the acronym "b2b" (for "business to business") for the third Domain Name. The Complainant submits that such additions to each of the Domain Names do not prevent the likelihood of confusion between the Domain Names and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Names. The Complainant states that there is no non-commercial or fair use of the Domain Names and no *bona fide* offering of goods or services. The Complainant adds that the Respondent is not commonly known by the term "lidl" but by a different name according to WhoIs. The Complainant also states that the Respondent is not in any way affiliated with the Complainant and it has not been authorized by the Complainant to use the Complainant's trade mark. Finally, the Complainant confirms that the Respondent has not acquired any trade mark or other right in the term "lidl".

The Complainant contends that the Respondent has registered the Domain Names with full knowledge of the Complainant's trade mark and the Respondent could not have ignored the reputation of the Complainant's trade mark LIDL as it is well-known and it is not a common or dictionary term. The simultaneous registration by the Respondent of three Domain Names reproducing the Complainant's LIDL trade mark shows that the Respondent specifically targeted the Complainant. The Complainant also submits that it is inconceivable that the Respondent could make a good faith use of the Domain Names and that as the Domain Names were suspended by the Registrar it suggests that the Domain Names were used in bad faith, possibly fraudulently. Therefore, the Complainant concludes that the Respondent has registered and is using the Domain Names in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 – Preliminary Issue: Language of Proceedings**

Pursuant to paragraph 11(a) of the Rules, "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

In the present case, the Registration Agreement appears to be in French as confirmed by the Registrar and the Complaint was submitted in English.

The Complainant submitted arguments in order to request that the Proceedings be in English (at least that the Complaint be accepted in English).

The Center formally notified the Respondent of the Complaint in French and in English. The Respondent did not comment or respond. The Respondent was given an opportunity to comment on or to oppose the Complainant's arguments.

The Panel is satisfied that the Respondent reasonably understands the nature of the Proceedings and finds that to request the Complainant to translate the Complaint would cause potential unfairness and unwarranted costs and delay in light of the overall circumstances including (i) the fact that the Complainant is headquartered in Germany and the Respondent appears to be based in the United Kingdom, (ii) the complete lack of reaction of the Respondent after having been given a fair chance to comment and (iii) the fact that there are clear irregularities in registration data for all Domain Names as confirmed by delivery service provider DHL when attempting to deliver the Complaint to the Respondent and as confirmed upon a brief verification by the Panel who was able to identify that the London postcode in the WhoIs does not exist.

In light of these circumstances, the Panel finds that it would not be unfair to proceed in a language other than that of the Registration Agreement and the Panel is satisfied that the Language of Proceedings should be English.

### **6.2 – Substantive Analysis**

In order to prevail the Complainant must substantiate, for each Domain Name, that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark 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.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to decide on the basis of the Complaint and supporting Annexes.

#### **A. Identical or Confusingly Similar**

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in LIDL, which is reproduced in its entirety in the Domain Names.

The second point that has to be considered is whether the Domain Names are identical or confusingly similar to the trade mark LIDL in which the Complainant has rights.

At the second level, the Domain Names incorporate the Complainant's LIDL trade mark in its entirety with the mere addition of an hyphen "-" and (i) the country identifier "fr" for France for two of the Domain Names and (ii) the acronym "b2b" (for "business to business") for the third Domain Name. The additions to the Domain Names do not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Names. The Panel finds that the LIDL trade mark is instantly recognizable within the three Domain Names.

Then there is the addition of the gTLDs ".online" and ".store". As is generally accepted, the addition of a gTLD is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Names are confusingly similar to the trade mark in which the Complainant has rights.

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

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable 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; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Names.

The Complainant has stated that the Respondent is not affiliated with the Complainant and that it has not been authorized by the Complainant to make any use of its LIDL trade mark. There is no indication that the Respondent is commonly known by any of the Domain Names.

The current absence of use of the Domain Names and the past use of the Domain Names, which was likely fraudulent given that the Domain Names were suspended by the Registrar, do not constitute a type of use that could be considered *bona fide*, legitimate or fair.

Furthermore, the nature of the Domain Names, comprising the Complainant's trade mark in its entirety in combination with additional terms, 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](#)").

Finally, the fact that the Respondent decided to register one of the Domain Names under the gTLD ".store" which is a term clearly targeting the Complainant's business would tend to support a finding that the Respondent wanted to take advantage of the Complainant's LIDL trade mark and as such that the Respondent lacks rights or legitimate interests in the Domain Names. See section 2.14.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

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

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally 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 mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Names were registered in bad faith.

The Domain Names reproduce the exact LIDL trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the renown of the Complainant's LIDL trade mark (including in the United Kingdom where the Respondent appears to be based) as substantiated by the Complainant and acknowledged by several previous UDRP panels, (ii) the fact that the Domain Names were registered relatively recently and many years after the registration of the trade mark LIDL, (iii) the chosen gTLD ".store" for one of the Domain Names which targets the Complainant's business, (iv) the use of incorrect registration data for the Domain Names and (v) the pattern of bad faith conduct suggested by the simultaneous registration by the Respondent of three Domain Names reproducing

and thus targeting the Complainant's LIDL trade mark (as per paragraph 4(b)(ii) of the Policy).

Thus, the Panel finds that the Domain Names were registered in bad faith.

As for use of the Domain Names in bad faith, given the circumstances described in the Complaint, the evidence provided by the Complainant and the brief verification carried out by the Panel, the Panel considers that the Domain Names are used in bad faith.

The Domain Names appear to be passively held at the time of the Decision, after being suspended by the Registrar. Passive use itself would not cure the Respondent's bad faith given the overall circumstances here, specifically the significant renown of the Complainant's LIDL trade mark and the Respondent's default. It is not possible to conceive of any plausible actual or contemplated active use of the Domain Names by the Respondent that would not be illegitimate (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Furthermore, the fact that all three Domain Names were suspended by the Registrar indicates that the Domain Names were used in breach of the Registration Agreement and/or in breach of a law or regulation which further suggests that the Domain Names were used in bad faith.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Names are used in bad faith.

Finally, this is further supported by the fact that the Respondent provided an incorrect address for the registration of the Domain Names (as confirmed by delivery service provider DHL when attempting to deliver the Complaint to the Respondent and as confirmed upon a brief verification by the Panel who was able to identify that the London postcode in the Whois does not exist), which, in the circumstances, is a further indication of the Respondent's bad faith and can only be seen as a way to make it more difficult for the Complainant to enforce their rights.

Thus, the Panel finds that the Domain Names have been registered and are also being 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 Domain Names, <b2b-lidl.online>, <fr-lidl.online> and <fr-lidl.store> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: May 9, 2022