

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. Denis Stepanenko
Case No. D2022-0734

1. The Parties

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

The Respondent is Denis Stepanenko, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <lidl-promo.com> (the “Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 4, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Registrar confirmed that the language of the Registration Agreement for the Domain Name is Russian. On March 9, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on March 10, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 both English and Russian 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 12, 2022.

Due to an apparent issue with the notification, on April 20, 2022, the Center invited the Respondent to indicate whether he wished to participate to this proceeding by April 25, 2022. No communication was received from the Respondent.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on April 28, 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

Lidl Stiftung & Co. KG, the Complainant in the present proceeding, is part of the Lidl Group – a global discount supermarket chain. The Lidl Group operates more than 10,000 stores with over 285,000 employees. Currently its stores are located in 29 countries. Moreover, the Complainant offers various additional services, e.g., a mobile phone network or travel services.

The Complainant is the owner of numerous LIDL trademark registrations, including:

- the European Union Registration LIDL No. 001778679 registered on August 22, 2002;
- the German Registration LIDL No. 2006134 registered on November 11, 1991;
- the International Registration LIDL No. 974355 registered on May 9, 2008.

The Complainant is also the owner of numerous domain names incorporating its LIDL trademark, including <lidl.de> and <lidl.com>.

The Respondent registered the Domain Name on November 25, 2021.

In accordance with the screenshots attached to the Complaint, as of December 14, 2021, the Domain Name resolved to a website displaying an logo highly similar to the Complainant's logo and inviting Internet users to take part in an online survey under a promise of winning a voucher worth EUR 500 (the "Website"). After finishing the survey, Internet users were being redirected to a third-party website where they were asked to submit contact details. These contact details could be subsequently used for commercial purposes, such as advertising, by other third-party companies.

As of the date of filing the Complaint, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the LIDL trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the disputed 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Paragraph 11(a) of the Rules provides that "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". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends that it is not familiar with Russian. Moreover, the Complainant notes that the Domain Name consists of Latin characters and includes the English term "promo" – an abbreviation for the term "promotion" – next to the Complainant's trademark LIDL.

The Panel acknowledges the Complainant's arguments and further finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the language of the proceeding, even though the Respondent was notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the Complainant's trademark in which it has rights.

The Complainant holds numerous valid LIDL trademark registrations, which precede the registration of the Domain Name.

The Domain Name incorporates the Complainant's LIDL trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term "promo" does not prevent confusing similarity between the Domain Name and the Complainant's trademark. UDRP panels have consistently held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The generic Top-Level Domain ("gTLD") ".com" in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant's trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant's LIDL trademark registrations predate the Respondent's registration of the Domain Name. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondent to use the LIDL trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

On the contrary, the Respondent previously used the Domain Name to attract Internet users to the Website where they were invited to take part in an online survey under a promise of winning a voucher worth EUR 500. After finishing the survey, they were redirected to a third-party website where they were asked to submit the contact information. This contact information might be in all likelihood collected for advertising purposes by other third-party companies. Such use of the Domain Name does not constitute a *bona fide* offering of goods and services, as well as does not qualify as a legitimate, noncommercial or fair use without intent for commercial gain. The Domain Name is currently inactive.

Finally, the Panel finds that the nature of the Domain Name suggests an affiliation with the Complainant and its LIDL trademark, as the Domain Name incorporates this trademark in the entirety with the term “promo” - an abbreviation for “promotion” related to the Complainant’s business. See section 2.5.1, [WIPO Overview 3.0](#).

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant’s *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. See section 3.1, [WIPO Overview 3.0](#).

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

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the 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 domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant’s rights in the LIDL trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant’s trademark at the time of registration of the Domain Name. This finding is supported by the content of the Website suggesting affiliation with the Complainant as it displayed a logo highly similar to the Complainant’s logo. Moreover, it has been proven to the Panel’s satisfaction that the Complainant’s LIDL trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under the LIDL trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant’s trademark.

Moreover, the Complainant presented evidence that the Domain Name is used in bad faith by the Respondent to attract Internet users to the Website impersonating the Complainant and attempting to collect the personal data of Internet users for further commercial purposes of third-party companies. Thus, this Panel finds that the Respondent uses the Domain Name in an attempt to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the LIDL trademark as to the source, sponsorship, affiliation, or endorsement of the Website or the activity carried out through this Website by the Respondent.

Finally, the Domain Name currently resolves to an inactive website. In the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name supports a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, can constitute bad faith under the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Novo Nordisk A/S v. CDMS Invest*, WIPO Case No. [D2012-0676](#).

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under 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 Domain Name <lidl-promo.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: May 10, 2022