

## **ADMINISTRATIVE PANEL DECISION**

Lidl Stiftung & Co. KG v. Wu Yu  
Case No. D2022-2278

### **1. The Parties**

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

The Respondent is Wu Yu, China.

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

The disputed domain name <lidlplus.app> is registered with NETIM SARL (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 24, 2022.

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 June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on August 1, 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 belongs to a well-known global discount supermarket chain based in Germany. The Complainant operates more than 10,000 stores in more than 29 European countries and in North America.

The Complainant offers also services such as a mobile phone network or travel services.

The Complainant owns trademark registrations for the term LIDL PLUS:

- International trademark No. 1612938, registration date March 22, 2021, covering a variety of goods and services, with extensions to various jurisdictions inside and outside of Europe; and

- Australian trademark registration No. 2211097, registration date December 20, 2021, covering various goods and services.

The Complainant also owns several trademark registrations for the term LIDL such as, for instance,

- European Union Trade Mark No. 001779784, registration date November 12, 2001, covering a variety of goods and services;

- German trademark registration No. 2006134, registration date November 11, 1991, covering various goods and services;

- International trademark No. 748064, registration date July 26, 2000, covering a variety of goods and services, with extensions to various jurisdictions inside and outside of Europe; and

- International trademark No. 974355, registration date May 9, 2008, covering a variety of goods and services, with extensions to various jurisdictions inside and outside of Europe.

The disputed domain name was registered on May 10, 2022. The disputed domain name does not resolve to any active website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant alleges that the disputed domain name is identical or confusingly similar with the Complainant's trademark rights in the terms LIDL PLUS and LIDL. The Complainant explains in this context that the disputed domain name consists of the Complainant's trademark LIDL and the term "plus".

The Complainant concludes that the trademark LIDL is clearly recognizable within the disputed domain name and that the addition of other terms does not prevent a finding of confusing similarity. The Complainant cites in this context *Lidl Stiftung & Co. KG v. SellDa GmbH*, WIPO Case No. [D2008-0724](#) to support this argument.

The Complainant alleges also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant refers to section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") where it is stated that panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

The Complainant believes that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or has made demonstrable preparations to do so.

The Complainant argues that the Respondent is not commonly known by the terms which comprise the disputed domain name and that no permission has been granted by the Complainant to the Respondent which would have allowed him to register the disputed domain name.

The Complainant believes also that the disputed domain name was registered and is being used in bad faith. According to the Complainant the Respondent knew or should have known of the registration and use of the Complainant's LIDL trademark prior to the registration of the disputed domain name. The Complainant's use of its trademarks and business activities as a very famous chain of supermarkets predates the registration of the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to the well-known trademark of the Complainant and that the descriptive term "plus" further endorses an assumption or affiliation or sponsorship between the Complainant and the web offer under the disputed domain name.

The Complainant states also that current passive holding of the disputed domain name does not prevent a finding of bad faith. The Complainant refers in this context to the consensus view of WIPO UDRP panels as outlined in section 3.3 of the [WIPO Overview 3.0](#) according to which the registration of domain names corresponds to famous trademarks can be considered as bad faith registration and use in case of inactive use since the Complainant's LIDL trademark is very distinctive with a strong reputation.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the LIDL PLUS and LIDL trademarks on the basis of its multiple trademark registrations in several jurisdictions. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#).

The disputed domain name is identical to LIDL PLUS trademark registered by the Complainant. On the other hand, mere fact of the addition of the term "plus", to the Complainant's trademark LIDL does not prevent a finding of confusing similarity with the Complainant's marks. Moreover, the Respondent's incorporation of the Complainant's trademark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademarks. Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".app" does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

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

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to an inactive website.

The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1).

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, leaving the Complainant's *prima facie* case unrebutted, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

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

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the 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 trademark 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) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark 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) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

With regard to the bad faith at the time of registration, the Panel notes that "lidl" and "lidlplus" are not a common or descriptive term, but a renowned trademark in and to which the Complainant has demonstrated has rights.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered trademarks in their entirety. Moreover, the disputed domain name is inherently misleading as it reproduces the Complainant's LIDL and LIDL PLUS trademarks.

In addition, owing to the substantial presence established worldwide, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering a domain name that entirely reproduces the Complainant's trademark.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the LIDL and LIDL PLUS trademarks.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

Furthermore, the Panel finds that the passive holding of the disputed domain name in the circumstances of the case does not prevent a finding of bad faith registration and use. On the contrary, this Panel agrees with the Complainant's assertion that in the case of domain names containing well-known earlier marks, passive holding can constitute an indication of bad faith.

Here the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)). In the circumstances, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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 <lidlplus.app> be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: August 15, 2022