

ADMINISTRATIVE PANEL DECISION

LIDL Stiftung & Co. KG v. Privacy service provided by Withheld for Privacy ehf / KEVIN INDELICATO

Case No. D2022-3007

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / KEVIN INDELICATO, Italy.

2. The Domain Name and Registrar

The disputed domain name <lidlshop-euro.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2022. On August 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 August 17, 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 August 22, 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 August 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 13, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on September 14, 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

Complainant belongs to 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. In Germany LIDL operates around 3,220 stores. Complainant offers various additional services, such as a mobile phone network or travel services. The name LIDL is derived from the name of a co-founder.

Complainant owns various trademark registrations for LIDL including:

- International Trademark Registration for LIDL (word) no 748064, registered on July 26, 2000, for goods and services in international classes 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, and 42; and
- European Union Trademark Registration for LIDL (word) no 001778679, registered on August 22, 2002, for goods and services in international classes 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, and 42.

Complainant operates its main website under the domain name <lidl.de>. Websites directed to customers in other countries are available under the respective domain names, e.g., <lidl.pl>, <lidl.fr>, <lidl.ro>, <lidl.es>, or <lidl.com>.

The Domain Name was registered on May 2, 2022. At the time of filing of the Complaint, the Domain Name resolved at times to a website (“the Website”) in, *inter alia*, French language targeting Complainant’s trademarks and business and using a similar logo to that of Complainant. On the Website, the colours blue and yellow, used by Complainant, were prominently displayed. The Website offered solely products of LIDL brands, e.g., “Parkside”, “Livarno”, or “Florabest”, each protected by further trademarks of Complainant. Only on a subpage which was linked at the very end of the homepage next to the legal notices in very small letters, under the heading “qui sommes nous” (meaning “Who are we” in English), it was stated that the Website operator had nothing to do with the LIDL brand.

Currently the Domain Name leads to an inactive website.

5. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

A. Identical or Confusingly Similar

The Domain Name incorporates Complainant's LIDL trademark in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The addition of the words "shop" and "europe", and the hyphen, do not prevent a finding of confusing similarity as the LIDL trademark remains clearly recognizable within the Domain Name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to Complainant's LIDL trademark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, 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) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The Domain Name falsely suggests that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduces, without authorization by Complainant, Complainant's trademark and logos, without any clearly visible disclaimer of association (or lack thereof) with Complainant. The hardly visible disclaimer described above does not satisfy the above criterion under (iii).

In addition, the nature of the Domain Name, comprising Complainant's trademark in its entirety in combination with terms "shop" and "europe", carries a risk of implied affiliation (See [WIPO Overview 3.0](#), section 2.5.1.).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or

(ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the LIDL mark had been widely used and registered by Complainant before the Domain Name's registration and enjoyed reputation (see, for example, *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-1441](#)), the Panel finds it more likely than not that Respondent had Complainant's mark in mind

when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search and also due to Complainant's nature of business, provided also online, namely online sales (see *Caesars World, Inc. v. Forum LLC.*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Website gave the impression that it originated from Complainant, prominently displaying visuals and logos similar to Complainant's trademarks and logos on the Website, thereby giving the false impression that the Website emanated from Complainant. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1 and 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

Furthermore, Respondent could have conducted a trademark search and should have found Complainant's prior registrations in respect of LIDL (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host a Website which appeared falsely to be that of Complainant.

Furthermore, the Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant's trademark and business. This further supports the finding of bad faith use (*Arkema France v. Aaron Blaine, supra*; *Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#) and [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

Lastly, under the heading "who are we", it was stated on the Website that the web shop shall enable distance selling of Complainant's products in countries that do not have a LIDL online store, such as France, Spain, Italy, and Portugal. Per Complaint, however, there is an online store in Spain (under <lidl.es>) where products can be ordered online and are also shipped via distance selling. Therefore, by claiming that Complainant does not have an online shop in Spain, false content is posted to disrupt Complainant's trademark (see [WIPO Overview 3.0](#), section 3.12).

The Domain Name currently leads to an inactive website. The non-use of a domain name would not prevent a finding of bad faith (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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, <lidlshop-euro.com> be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: September 28, 2022