

ADMINISTRATIVE PANEL DECISION

LIDL Stiftung & Co. KG v. Karen C Kelly, Karen C Kelley
Case No. D2022-3313

1. The Parties

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

Respondent is Karen C Kelly, Karen C Kelley, Canada.

2. The Domain Name and Registrar

The disputed domain name <lidl-uk.com> is registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2022. On September 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 7, 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 Complainant on September 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 12, 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 Respondent of the Complaint, and the proceedings commenced on September 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 4, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on October 7, 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 is a discount supermarket chain company based in Germany. Complainant operates in 32 countries, with more than 3,200 stores and 200,000 employees, all under the trademark LIDL, which they have owned for over 30 years.

Complainant owns a wide portfolio of trademark registrations internationally containing the word mark LIDL. Some examples of Complainant's trademark registrations can be found below:

Registration No.	Trademark	Jurisdictions	International Classes	Date of Registration
974355	LIDL	International (AL, AU, AZ, BY, CH, CN, GE, HR, IS, JP, KG, KR, LI, MA, MC, MD, ME, MK, NO, NZ, RS, RU, SM, TJ, TM, TR, UA, UZ, VN)	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 40, 41, 42	May 9, 2008
001779784	LIDL	European Union	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, 42	November 12, 2001
UK00001474000	LIDL	United Kingdom	16, 35, 36, 41, 42	December 10, 1993
2006134	LIDL	Germany	29, 3, 5, 8, 11, 16, 18, 21, 28, 30, 31, 32, 33	November 11, 1991

Complainant is well known around the world as LIDL, a name which has no meaning in English or German, and provides its services with physical and online stores. Complainant owns and operates websites at numerous domain names, such as <lidl.co.uk>.

The disputed domain name was registered on July 8, 2022, and resolves to a webpage in which a parking page containing Pay-Per-Click ("PPC") links to third party websites is displayed.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to its registered trademark LIDL, since it fully incorporates Complainant's trademark LIDL.

Complainant affirms that Respondent creates a confusion, considering specially that the disputed domain name uses the trademark LIDL in its entirety with the addition of the geographical term "uk", as consumers may believe that this domain name is linked to Complainant, since Complainant provides services in the United Kingdom and owns the domain name <lidl.co.uk>.

Therefore, according to Complainant, the disputed domain name presents a risk of confusion to consumers, who will likely believe it is linked with Complainant's trademark LIDL, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent does not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark LIDL as a domain name nor is Respondent associated with Complainant.

Complainant observes that the website that resolves from the disputed domain name is a pay-per-click parking website, which does not mean a noncommercial or fair use of the disputed domain name.

Furthermore, Complainant notes that there would be no credible evidence from Respondent that may prove that the disputed domain name is being legitimately used, nor that Respondent is commonly known by the disputed domain name.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(3) of the Rules have been fulfilled.

Moreover, Complainant states that (i) the fact that the disputed domain name contains the trademark LIDL in its entirety would indicate bad faith; (ii) Respondent knew or should have known Complainant's rights to the trademark LIDL, given that it is internationally well known; (iii) there is no conceivable legitimate use of the disputed domain name by Respondent, considering that it includes the trademark LIDL in its entirety and resolves to a website which is a PPC parking page; and (iv) the disputed domain name is being passively held by Respondent, since the website under the disputed domain name displays a parking page containing keywords that lead to sponsored links, which has led to the conclusion of a bad faith registration and use in previous UDRP decisions.

Thus, the requirements for the identification of a bad faith use of the disputed domain name would have been fulfilled, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for LIDL, and that the disputed domain name is constituted by the trademark LIDL in its entirety with the addition of the geographical term “uk”. The addition of the letters “uk” does not prevent a finding of confusing similarity with Complainant’s trademark LIDL, since the trademark LIDL is fully integrated in the disputed domain name, and the term “uk” does not prevent the trademark from being recognizable in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark LIDL, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the [WIPO Overview 3.0](#)” as follows: “[w]hile 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.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant’s contentions, the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* offering of goods and services that could demonstrate rights or legitimate interests, since the evidence shows that the disputed domain name resolves to a website which displays PPC links to Internet users.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, shall be evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant’s well-known trademark LIDL, plus the addition of the geographical term “uk”. The Panel finds that Respondent was or should have been aware of Complainant’s rights to LIDL at the time of the registration as Complainant enjoys an international reputation with the use of the referred trademark.

The Panel finds that Respondent registered the disputed domain name with the intention of attracting Internet users in search of authentic LIDL services.

Moreover, the Panel finds that the geographical indicator “uk” accompanying the trademark LIDL in the disputed domain name consists of a reference that is linked with the services provided by Complainant (as duly proven by the imagery displayed in the Complaint, Complainant provides its services in the United Kingdom, with physical stores and via the disputed domain name <lidl.co.uk>), which indicates that the use of the trademark LIDL in the present case, unauthorized by Complainant, is in bad faith.

In addition, the present circumstances allows a finding of bad faith registration and use, since the evidence indicates that Respondent uses the disputed domain name to display a parking page with multiple PPC links. See *Associazione Radio Maria v. Mary Martinez / Domains by Proxy, Inc.*, WIPO Case No. [D2010-2181](#).

Thus, considering that (i) the disputed domain name is formed by Complainant's well-known trademark LIDL with the addition of the geographical term "uk"; and (ii) the disputed domain name is used to divert to a website in which several PPC links are displayed, enabling Respondent to obtain illegitimate and unauthorized commercial gain from accesses to the links; this Panel concludes that Respondent is trying to obtain profit from Complainant's trademark LIDL reputation by diverting its clients into accessing the PPC links – which indicates bad faith in Respondent's actions.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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 <lidl-uk.com> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: October 26, 2022