

ADMINISTRATIVE PANEL DECISION

LIDL Stiftung & Co. KG v. guada maosa
Case No. D2023-3012

1. The Parties

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

The Respondent is guada maosa, Canada.

2. The Domain Name and Registrar

The disputed domain name <mylidlplus.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2023. On July 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 2023, 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 (Unknown / Redacted / Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 14, 2023, 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 in English on July 17, 2023.

On July 14, 2023, the Center transmitted an email communication to the Parties in English and French regarding the language of the proceeding. On July 17, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and French of the Complaint, and the proceedings commenced on July 21, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was August 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 11, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on September 1, 2023. 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 Lidl Stiftung & Co. KG, a German corporation, is part of the LIDL Group that runs a chain of discount supermarkets on an international scale and operates in more than 30 countries.

It owns trademark rights in the terms LIDL and LIDL PLUS, *inter alia*:

- European Union Trademark Reg. 001778679 of August 22, 2002, for LIDL;
- International Trademark Reg. 974355 of May 9, 2008, for LIDL;
- International Trademark Reg. 1612938 of March 22, 2021, for LIDL PLUS & device;
- European Union Trademark Reg. 18317450 of February 28, 2023, for LIDL PLUS & device;
- United States of America Trademark Reg. 6976251 of February 14, 2023, for LIDL PLUS & device.

The Complainant also operates apps intended to its customers under the names "Lidl Plus" and "My Lidl".

The disputed domain name <mylidlplus.com> was registered on June 11, 2023. It does not route towards any active web page at the time of this Decision, but the Complainant has brought evidence that the disputed domain name used to redirect to one of its official websites.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Issue - Language of the Proceeding

Paragraph 11(a) of the Rules indicates 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".

In this case, the Complaint was submitted in English and the Registrar confirmed that the language of the Registration Agreement is French.

The Complainant requested English to be the language of the proceeding mainly on the grounds that the Respondent's place of residence is Ontario, Canada - an English speaking jurisdiction, that the disputed domain name is formed with English terms "my" and "plus", together with the Complainant's trademark, that the Complainant is not familiar with French, and would have to incur additional costs to proceed in French, which would not be equitable.

Noting that the Respondent did not object to the Complainant's language request and did not submit any Response either in English or French although the Center notified the Respondent in English and French of the language of the proceeding and of the Complaint, and that the disputed domain name is not in French, the Panel comes to the conclusion that in all fairness, the language of the proceeding should be in the English language.

6.2 Substantive Issues

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (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.

A. Identical or Confusingly Similar

The Complainant is the owner of numerous LIDL and LIDL PLUS trademarks.

The disputed domain name <mylidlplus.com> reproduces the Complainant's trademarks in their entirety.

Where the relevant trademarks are recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the term "my" or "plus", would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Furthermore, the addition of the generic Top-Level Domain ".com" does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Respondent has not filed a Response and thus did not deny the Complainant's assertions, nor brought any information or evidence demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent is not commonly known under the disputed domain name and does not make any *bona fide* use of the same, being emphasized that the disputed domain name currently does not resolve towards any active web page and previously redirected to one of the Complainant's official websites.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has substantiated the fact that its trademark LIDL, which has been registered and used internationally for years, now benefits from a high level of public awareness, as acknowledged in a number of earlier UDRP decisions, such as *Lidl Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [D2020-1441](#) ("Considering the distinctive and well-known character of the Complainant's LIDL trademark, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Name"). It therefore appears very unlikely that the Respondent could be unaware of the Complainant's rights in the trademarks LIDL and LIDL PLUS when it registered the disputed domain name.

Besides, the Complainant has brought evidence that, in June 2023, the disputed domain name redirected to one of the official websites of the Complainant.

The Panel also notes that the Complainant has substantiated that it runs some apps intended to its customers under the names "Lidl Plus" and "My Lidl", so that it seems highly unlikely that the Respondent's choice of registering the disputed domain name is a coincidence.

For this Panel, the above is a clear indication that the Respondent necessarily had the Complainant's trademarks in mind when it registered the disputed domain name, and intended to divert Internet users.

It is further noted by the Panel that the disputed domain name is not being actively used by the Respondent at the time of this Decision, and does not resolve to any active web page with substantive content.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP it is deemed to establish bad faith registration and use, the apparent lack of so-called active use (*e.g.*, to resolve to a website) of the domain name, does not prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark and no Response to the Complaint having been filed. UDRP panels may draw inferences about whether a domain name is being used in bad faith given the circumstances surrounding the registration and use of the domain name.

As stated in the [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While

panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case, the Panel takes into account (i) the degree of distinctiveness and reputation of the Complainant's trademarks, (ii) the Respondent's concealing of its identity by using a privacy service, (iii) the implausibility of any good faith use to which the inherently misleading disputed domain name may be put, and (iv) the lack of the Response from the Respondent. The Panel therefore finds that the passive holding of the disputed domain name in this case does not prevent a finding of bad faith.

Accordingly, 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 <mylidplus.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: September 15, 2023