

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG, Aldi Stores Limited v. Joanna Englehart
Case No. D2024-0897

1. The Parties

The Complainants are Aldi GmbH & Co. KG, Germany (“First Complainant”), and Aldi Stores Limited, United Kingdom (“Second Complainant”), represented by Freeths LLP, United Kingdom.

The Respondent is Joanna Englehart, United States of America.

2. The Domain Name and Registrar

The disputed domain name <aldi360.com> (“Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 29, 2024, 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 (Registrant of the Disputed Domain Name) and contact information in the Complaint. The Center sent an email communication to the Complainants on March 4, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on March 11, 2024.

The Center verified that the Complaint together with the amendment to the amended 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 March 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2024. On April 2, 2024, the Respondent sent two email communications to the Center (together, the “Response”). On April 3, 2024, the Center acknowledged

receipt of this late Response and indicated that it would be up to the Panel's discretion to decide whether to consider the late Response.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on April 15, 2024. 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 Complainants and their connected companies offer grocery retailing services under the mark "ALDI" and have more than 5,000 stores across the world, including in the United States ("US") where the Respondent is based. The First Complainant is a German registered company that owns various word and figurative trademarks for or containing the term "ALDI" ("Complainants' Trademark"). The Second Complainant is a limited liability company and the exclusive licensee of the Complainants' Trademark in the United Kingdom ("UK").

The relevant trademark registrations include, inter alia, European Union Trademark Registration No. 002071728 for "ALDI" registered on April 14, 2005 in Classes 3, 4, 9, 16, 24, 25, 29, 30, 31, 32, 33 and 34; UK Trademark Registration No. 00002250300 for "ALDI" registered on March 30, 2001 in Classes 1, 3, 5, 6, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34 and 35; and UK Trademark Registration No. 00902071728 for "ALDI" registered on April 14, 2005 in Classes 3, 4, 9, 16, 24, 25, 29, 30, 31, 32, 33 and 34.

The Complainants' Trademark is fully incorporated in the Complainants' domain name <aldi.co.uk>, which was registered on September 29, 1996 and resolves to the Complainants' website for the UK market. A quick Internet search conducted by the Panel reveals the domain name <aldi.us> held by ALDI International Services GmbH & Co. oHG (presumably one of the Complainants' connected companies) and registered on April 19, 2002, which resolves to the ALDI website for the US market.

The Disputed Domain Name was registered by the Respondent on February 17, 2023. At the time of filing of the Complaint and at the time of the decision, the Disputed Domain Name resolved to a blank website landing page.

5. Parties' Contentions

A. Complainants

The Complainants contends that they have satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainants contend that:

(a) The Disputed Domain Name is confusingly similar to the Complainants' Trademark. The Disputed Domain Name contains the Complainants' Trademark in its entirety and users will be confused into believing that the Disputed Domain name is registered to, or at least operated, authorised or endorsed by the Complainants. Additionally, users will draw an inference that any website hosted at the Disputed Domain Name is operated by or with the consent of the Complainants.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainants have not licensed or otherwise authorised the Respondent to use the Complainants' Trademark. Moreover, the Respondent does not intend to make legitimate use of the Disputed Domain Name as there is no actual offering of goods and services, and it is not making any commercial or fair use of the Disputed Domain Name.

(c) Both the Respondent's registration and use of the Disputed Domain Name establish the Respondent's bad faith. The Disputed Domain Name makes unauthorised use of a sign confusingly similar to the Complainants' Trademark and thus takes unfair advantage of the Complainants' rights. The Disputed Domain Name has been (or is planned to be) intentionally used to attract Internet users to any website hosted at the Disputed Domain Name for commercial gain via confusion with the Complainants' Trademark. Even in the case that consumers are not confused by the Disputed Domain Name, the distinctive character and reputation of the Complainants' Trademark are harmed by the association to the Disputed Domain Name, causing detrimental impact to the distinctive reputation and professional activities of the Complainants.

B. Respondent

The Respondent did not reply to the Complainants' contentions within the specified time frame. Given the Respondent submitted the Response only one day after the deadline, the Panel has decided to consider the late Response.

In the Respondent's first email dated April 2, 2024, she contended that the Disputed Domain Name is an acronym for a business that she plans to pursue in the near future. The email did not come with further explanation or supporting evidence, nor did the Respondent address any of the Complainants' contentions.

In the Respondent's second email dated April 2, 2024, she asked the Center to provide the Complainants' email to forward a copy of the Response to the Complainants. The Center copied the Complainants' representatives in its email communication to the Respondent on April 3, 2024. The Center is not aware if any further communication took place between the Respondent and the Complainants.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainants are required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, "360", may bear on the assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainants' Trademark for the purposes of the Policy.

[WIPO Overview 3.0](#), section 1.8. Furthermore, it is well established that the gTLD, “.com” in this case, may be disregarded. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainants' prima facie case and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel agrees with the Complainants that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name. There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or can be regarded as legitimate non-commercial or fair use.

Although the Respondent contended the Disputed Domain Name is an acronym for an intended business, the Panel considers that the Response does not satisfactorily address the Complainants' arguments under this element of the Policy. The Respondent did not give any information about her alleged business. The Respondent also failed to explain the meaning of the alleged acronym and the reasons for adopting it, if not for the purpose of creating an impression that the Disputed Domain Name originates from, or is associated with, the Complainants.

Panels have held that the use of a domain name for illegal activity, such as in this case the possible impersonation or passing off by the Respondent as the Complainants using the Complainants' Trademark, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Respondent did not state whether she was aware of the Complainants and their rights in the Complainants' Trademark when registering and using the Disputed Domain Name. However, a quick Internet search conducted by the Panel shows that the top search results returned for the Complainants' Trademark relate to the Complainants' business and/or third party websites providing information relating to

the Complainants' services. According to the Complainants' website at <https://stores.aldi.us/>, there are 2,372 ALDI locations in the US (including 41 locations in Alabama) where the Respondent is based.

In the present case, the Panel notes that it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainants' Trademark in its entirety. As discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to satisfactorily respond to any of the Complainants' contentions and has provided no evidence of her actual or contemplated good faith use of the Disputed Domain Name.

Panels have found that the lack of use of a domain name, in this case a blank landing page, would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainants' Trademark, as well as the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

The Panel finds that the Complainants have established the third element 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 <aldi360.com> be transferred to the Second Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: April 29, 2024