

ADMINISTRATIVE PANEL DECISION

Linde Plc v. 杨智超 (Zhichao Yang)
Case No. D2022-4505

1. The Parties

The Complainant is Linde Plc, Ireland, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <lindeu.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 25, 2022. On November 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 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 November 28, 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 amended Complaint in English on November 30, 2022.

On November 28, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on November 30, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with 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 in English and Chinese of the Complaint, and the proceedings commenced on December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 27, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on January 4, 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 a company headquartered in Ireland, is active in the industrial gas and chemical engineering sector, and claims to be a leading company in this sector with operating profits of nearly USD 5 billion (EUR 4 billion) and sales of USD 31 billion (EUR 26 billion), declared in 2021. The company employs approximately 72,000 people globally and serves customers in more than 100 countries worldwide. The Complainant serves customers in the healthcare, petroleum refining, manufacturing, food, beverage carbonation, fiber-optics, steel making, aerospace, material handling equipment (MHE), chemicals, electronics and water treatment industries, and it has received several awards from external entities for its business operations.

According to the Complainant's website, one of its subsidiaries is Linde GmbH. The Complainant provides evidence that Linde GmbH owns an extensive international trademark portfolio for LINDE (including figurative and word trademarks), including, but not limited to Chinese Trademark Registration number 231546 for the logo mark LINDE registered on August 15, 1985, International Trademark Registration number 220883 for the work mark LINDE registered on June 12, 1959, and European Union Trademark Registration number 136671 for the logo mark LINDE registered on November 23, 1999.

The disputed domain name was registered on December 9, 2021, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Panel notes that the disputed domain name is linked to an active website in English, which contains what are presumed to be pay-per-click hyperlinks titled "Welding Gas Near Me", "Bottled Gas Suppliers Near Me" and "Gas Suppliers Near Me", which redirect Internet users to third party websites, including to websites of competitors of the Complainant, to generate pay-per-click revenue.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for LINDE, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive, used intensively and well-regarded in the sectors in which it operates and submits company and marketing information. Particularly, the Complainant provides evidence that the disputed domain name is linked to an active website displaying what are presumed to be pay-per-click hyperlinks and argues that this constitutes an intentional attempt by the Respondent to attract, for commercial gain, Internet users to the Complainant's competing websites and to other unrelated websites by creating a likelihood of confusion with the Complainant's marks for LINDE. The Complainant also essentially contends that, based on those facts, the Respondent's registration and use of the disputed domain name does not confer any rights or legitimate interests in respect of the disputed domain name and constitutes registration and use of the disputed domain name in bad faith. The Complainant furthermore argues that the disputed domain name is being offered for sale on multiple platforms and in amounts that far

exceeds the Respondent's out-of-pocket expenses in registering the disputed domain name, which serves as further evidence of the Respondent's lack of rights and legitimate interests. The Complainant finally also claims in its amended Complaint that the Respondent was involved in multiple earlier domain name disputes with very similar facts and argues that the Respondent has therefore engaged in a pattern of trademark-abusive conduct.

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. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement. However, the Panel is given the authority to determine a language of the proceeding other than the language of the Registration Agreement, taking into account the circumstances of every individual case.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comments on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited in a timely manner, in Chinese and English, by the Center to present its comments and Response in either English or Chinese, but chose not to do so); the fact that the website hosted at the disputed domain name is exclusively in English and that the disputed domain name is written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this administrative proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (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.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

A trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition

(“[WIPO Overview 3.0](#)”), section 1.4.1). The Panel therefore finds that the Complainant has shown that it has valid rights in the mark LINDE which has been intensively used and registered as a trademark in several jurisdictions.

Moreover, as to confusing similarity, [WIPO Overview 3.0](#), section 1.7, states: “[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. In this case, the Panel considers that the disputed domain name was created by incorporating the trademark for LINDE in its entirety, followed by the letter “u”. Accordingly, the Panel considers that the disputed domain name contains the entirety of the trademark for LINDE, which remains easily recognizable in the disputed domain name, and the addition of the letter “u” does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8. The Panel also notes that the applicable generic Top-Level Domain (“gTLD”) (“.com” in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark LINDE in which the Complainant has rights, and the first element required by the Policy is fulfilled.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making a legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, the Respondent did not provide any Response or evidence in this proceeding.

Furthermore, upon review of the facts, the Panel notes that the disputed domain name is linked to an active website in English, which contains what are presumed to be pay-per-click hyperlinks titled “Welding Gas Near Me”, “Bottled Gas Suppliers Near Me” and “Gas Suppliers Near Me”, which redirect Internet users to third party websites, including to websites of competitors of the Complainant, to generate pay-per-click revenue. The Panel concludes that this shows the Respondent’s intention to capitalize on the reputation and goodwill of the trademark for LINDE in which the Complainant has rights, from which the Respondent cannot derive any rights or legitimate interests in the disputed domain name (see also [WIPO Overview 3.0](#), section 2.9 and previous UDRP decisions in this sense such as *Maker Studios, Inc. v. ORM LTD / Contact Privacy Inc. Customer 0137258808*, WIPO Case No. [D2014-0918](#) and *Lennar Pacific Properties Management, Inc., Lennar Mortgage, LLC v. 徐海民 (Xu Hai Min), 权中俊 (Quan Zhong Jun), 殷磊 (Lei Yin), 杨智强 (Zhi Qiang Yang)*, WIPO Case No. [D2021-0576](#)).

On the basis of the foregoing elements, the Panel finds that the Complainant has satisfied the requirements for the second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name, which incorporates the intensively used trademark for LINDE in its entirety, was consciously selected and registered by the Respondent with the clear intention to divert unsuspecting Internet users to the Respondent’s website linked to the disputed domain name. Furthermore, the Panel has reviewed the Complainant’s evidence of the top search results, on various online search engines for the term “linde u”, from which the Panel concludes that such results clearly refer to the Complainant’s business. The Panel concludes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in the trademarks for LINDE. The Panel concludes that the registration of the

disputed domain name was done with the Respondent's knowledge of the existence of the LINDE marks in which the Complainant has rights. Given these elements, the Panel considers that the registration of the disputed domain name was conducted in bad faith.

As to use of the disputed domain name in bad faith, the disputed domain name is linked to an active website in English, which contains what are presumed to be pay-per-click hyperlinks titled "Welding Gas Near Me", "Bottled Gas Suppliers Near Me" and "Gas Suppliers Near Me", which redirect Internet users to third party websites, including to websites of competitors of the Complainant, to generate pay-per-click revenue. This shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Panel considers that this constitutes direct evidence of bad faith of the Respondent under paragraph 4(b)(iv) of the Policy. Moreover, the Panel also agrees with the Complainant that the Respondent is attempting to sell the disputed domain name on multiple platforms for an amount far in excess of the Respondent's out-of-pocket costs, *i.e.*, respectively for USD 7,999 and CNY 69,131, and finds that this also constitutes evidence of bad faith of the Respondent under paragraph 4(b)(i) of the Policy. Finally, the Panel finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark-abusive domain name registrations. In this regard, the Panel refers to numerous prior UDRP decisions, including the following cases: *ZenBusiness Inc. v. See PrivacyGuardian.org / Zhichao Yang*, WIPO Case No. [D2022-3177](#) and *Milliman, Inc. v. 杨智超 (yang zhi chao aka Zhichao Yang)*, WIPO Case No. [D2022-3077](#). These cases involve the Respondent, and in these cases, the respective panels found that the Respondent had engaged in very similar acts of cybersquatting and also found that the Respondent had engaged in a pattern of trademark-abusive domain name registrations. The preceding elements lead the Panel to conclude that the Respondent registered and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <lindeu.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: January 16, 2023