

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. NICOL MALLARD

Case No. D2022-4775

1. The Parties

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

The Respondent is NICOL MALLARD, France.

2. The Domain Name and Registrar

The disputed domain name <lidl-france.org> (the “Disputed Domain Name”) is registered with Register SpA (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 15, 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 December 19, 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 on December 20, 2022. Because the Complaint has been submitted in English and the language of the registration agreement of the Disputed Domain Name (the “Registration Agreement”) is French, the Center sent an email in relation to the language of the proceeding on January 3, 2023. On January 4, 2023, the Complainant submitted a request for English to be the language of the proceeding to which the Respondent has not replied.

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 in both English and French, and the proceedings commenced on January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on

February 3, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on February 10, 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

Founded in 1932, the Complainant is a German discount supermarket chain, which operates more than 10,000 retail stores with over 300,000 employees in over 30 countries, including Germany and France. The Complainant also offers additional services such as mobile phone network services and travel services. Operating under the mark LIDL, the Complainant has acquired considerable goodwill and reputation globally.

The Complainant is the owner of a number of trademark registrations for LIDL in various countries and classes, including, *inter alia*, German Trademark Registration No. 2006134 for “Lidl” in Classes 3, 5, 8, 11, 16, 18, 21, 28 to 33 registered on November 11, 1991, German Trademark Registration No. 30009606 for LIDL in Classes 1 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on March 9, 2000, International Trademark Registration No. 1541701 for LIDL in Classes 1 to 36, and 38 to 44 registered on January 30, 2020 designating Australia, Canada, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Egypt, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine, International Trademark Registration No. 1537891 for LIDL (figurative) in Classes 1 to 36, and 38 to 44 registered on January 30, 2020 designating Australia, Colombia, Indonesia, Cambodia, Republic of Korea, Mexico, Malaysia, New Zealand, Singapore, Turkmenistan, the United States of America, Albania, Bosnia and Herzegovina, Belarus, Iran (Islamic Republic of), Kyrgyzstan, Kazakhstan, Montenegro, Republic of North Macedonia, the Russian Federation, Tajikistan, and Ukraine, European Union Trademark Registration No. 001778679 for LIDL in Classes 1 to 5, 7 to 9, 11, 13, 14, 16, 18, 21, 23 to 36, 39, 41 and 42 registered on August 22, 2002, and European Union Trademark Registration No. 013192752 for LIDL (figurative) in Classes 1 to 36, and 38 to 44 registered on February 27, 2015 (the “Complainant’s Trademark”). The Complainant’s Trademark is also fully incorporated in various domain names, including, *inter alia*, <lidl.fr>, <lidl.pl>, <lidl.de>, <lidl.ro> and <lidl.com> (the “Complainant’s Domain Name”).

The Disputed Domain Name was registered by the Respondent on November 30, 2022, which is more than 32 years after the Complainant’s Trademark was first registered. The Disputed Domain Name previously resolved to a parking website. The Disputed Domain Name currently resolves to an inaccessible webpage.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

(a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. The only element which differentiates the Disputed Domain Name from the Complainant’s Trademark is the geographical term “France”.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not affiliated with the Complainant in any way, and the Respondent has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. Moreover, there is no evidence to show that the Respondent used or has made 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, or for a legitimate noncommercial or fair use. There is also no evidence to show that the Respondent is commonly known by the Disputed Domain Name or has any registered trademarks containing LIDL.

(c) The Respondent's mere registration of the Disputed Domain Name, which is identical or confusingly similar to the Complainant's Trademark, creates a presumption of bad faith. Besides, given the widespread reputation acquired by the Complainant in the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered the Disputed Domain Name and used the Complainant's Trademark. There is no conceivable legitimate interest for the Respondent's use of the Disputed Domain Name, and its passive holding of the Disputed Domain Name does not prevent a finding of bad faith. Therefore, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of Proceedings

The Complaint was filed in English. The language of the Registration Agreement is French. On January 4, 2023, the Complainant requested that English be the language of the proceedings. The Complainant submits that to the best of its knowledge, the Registration Agreement is in English, that the Complainant is a German company which has no familiarity with French, and that requiring the Complainant to retain specialized translation services would cause disproportionately high cost and significant delay to the proceedings. The Respondent did not comment on or oppose the Complainant's request.

Pursuant to paragraph 11(a) of the Rules, 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.

The Panel is mindful of the requirement of paragraph 10(b) of the Rules which provides that in all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. The Panel observes that the Center has issued its case-related communications in both French and English. The Respondent has chosen not to participate in the proceedings and he has been notified of his default in both French and English. The Panel is satisfied that the Center's approach has been fair and appropriate (see *Fissler GmbH v. Chin Jang Ho*, WIPO Case No. [D2008-1002](#)).

Further, in ensuring fairness in the selection of language, the Panel shall take into consideration the parties' level of comfortability with each language, as well as the expenses to be incurred and the possibility of delay in the proceedings if translation is required (See *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)). In the present case, given the Complainant's inability to communicate in French, the Panel notes that if the Complainant were to submit all documents in French, the proceedings will be unduly delayed and the Complainant would have to incur substantial expenses for translation.

Therefore, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the present proceedings, but on the condition that the Respondent shall be permitted to submit any documents or assertions in French.

6.2 Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant is 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 Complainant has 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

The Panel accepts that the Complainant has rights in the Complainant's Trademark based on various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the generic Top Level Domain (gTLD) extension, ".org" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the geographical term "France" at the end of the Complainant's Trademark. UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless or otherwise) will not alter the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.8 of the [WIPO Overview 3.0](#). The Panel therefore finds that the LIDL trademark is recognizable in the Disputed Domain Name and the mere addition of the term "France" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent, which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(b) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him 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 or services; or
- (ii) The Respondent 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.

There is no evidence to show that the Respondent has trademark rights corresponding to the LIDL mark or the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

Considering the fact that the Disputed Domain Name only resolved to a parking website, there is no evidence to suggest that the Respondent's use of, or 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. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use. In this regard, the Panel notes that the nature of the Disputed Domain Name, incorporating the Complainant's Trademark in its entirety with the addition of the geographical term "France", carries a risk of implied affiliation. This is particularly so when the Complainant currently operates over 1,570 stores in France and uses the domain name <lidl.fr> for the French market. See Section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "LIDL" are the Complainant's websites and third-party websites providing information relating to the Complainant's supermarkets and stores. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and the Complainant's rights in its LIDL marks when registering and using the Disputed Domain Name.

The Panel considers that the lack of active use of the Disputed Domain Name cannot prevent a finding of bad faith under the doctrine of passive holding (see *TELEVISION FRANCAISE 1 v Julienne (Technologies Futures 1)*, WIPO Case No. [D2000-1589](#)). In particular, the following factors have already been considered relevant in applying the passive holding doctrine: (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, and (iii) the implausibility of any good faith use to which the domain name may be put (see section 3.3. of the [WIPO Overview 3.0](#)).

In the present case, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

- (i) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated *bona fide* use of the Disputed Domain Name; and
- (ii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to *bona fide* use, given that the Disputed Domain Name contains the Complainant's Trademark in its entirety with the addition of the geographical term "France" where the Complainant operates. The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been 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-france.org>, be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: February 22, 2023