

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG and Aldi Stores Limited v. Domain to be deleted Case No. D2023-0120

1. The Parties

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

The Respondent is Domain to be deleted, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <aldisbenefits.com> is registered with GoDaddy Online Services Cayman Islands Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2023, the Registrar transmitted by email to the Center its verification response. The Center requested further confirmation that the registrant details provided in the Registrar verification response reply dated January 13, 2023, were those provided by the registrant directly when registering the domain name or by the Registrar. The Complainant filed an amendment to the Complaint on January 23, 2023.

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, and the proceedings commenced on February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. No formal Response was filed with the Center.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 28, 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 Complainants are part of the same corporate group that exploits grocery retailing, counting with more than 5,000 stores across the world and are also active in Australia, Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Switzerland, and the United States of America.

The First Complainant is the owner of at least 17 trademark registrations in the United Kingdom which incorporate the ALDI brand, amongst which the trademark registration No. UK00002250300 for the word mark ALDI, filed on October 26, 2000, registered on March 30, 2001, subsequently renewed, in classes 01, 03, 05, 06, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34, and 35.

The Second Complainant was incorporated in 1988, and is the exclusive licensee for the ALDI trademarks in the United Kingdom. It also operates the domain name <aldi.co.uk> as its main website.

The disputed domain name was registered on February 20, 2021, and presently resolves to a parked webpage displaying pay-per-click ("PPC") advertisements.

5. Parties' Contentions

A. Complainants

The Complainants assert to be recognized as international leaders in grocery retailing, having become a well-known supermarket chain also in the United Kingdom, what is corroborated by the fact that ALDI has been recognized as the most popular brand in the supermarket sector in the United Kingdom, and the 22nd most popular brand across all sectors in the United Kingdom by the YouGov BrandIndex in 2022, (Annex 7 to the Complaint).

Furthermore, according to the Complainants, the ALDI trademark has an enhanced distinctive character and reputation in the United Kingdom, European Union and beyond as a result of the substantial and sustained use made of it by the Complainants and their connected companies, having generated substantial goodwill in the ALDI name.

The Complainants contend that the disputed domain name incorporates the "ALDI" sign (which is identical to the Complainants' name and trademark) together with "sbenefits", what leads to potentially being read as "Aldi's benefits" which enhances confusion as it suggests that the disputed domain name will host a webpage relating to goods or services which are sold by the Complainants, or employee or other benefits relating to the Complainants.

As to the absence of rights or legitimate interests, the Complainants argue that:

- (i) the Complainants' rights in the ALDI trademark name predate the Respondent's registration of the disputed domain name;
- (ii) the Complainants have not licensed or otherwise authorized the Respondent to use the ALDI name or trademark;
- (iii) the Respondent has not used the disputed domain name or any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, nor made any legitimate non-commercial or fair use of the disputed domain name as described in the Policy; and

- (iv) the Respondent has not been commonly known by the disputed domain name.

The registration and use of the disputed domain name in bad faith, according to the Complainants, arise from the distinctive character and reputation of the ALDI trademark and the high risk of undue association thereof with the disputed domain name.

B. Respondent

On January 30, 2023, in response to a clarification request from the Center, the Registrar disclosed additional registrant information. In light of the Registrar's clarification, the Center further asked it to confirm if the information disclosed belonged to the same registrant as previously disclosed, the change merely being a result of the registrant's update. In response, the Registrar confirmed that the information disclosed did relate to that of the Respondent.

Consequently, the Center sent an email to the additional contact details disclosed, regarding the complaint filed against the registrant of the disputed domain name under the UDRP. The Center requested instruction by February 7, 2023, as to whether the Center would continue to use those contact details in future case-related communications. An email reply was received, on February 3, 2023, informing the Center that the additional contact details disclosed were not associated with the owner of the disputed domain name. The Center acknowledged receipt of the email communication and stated in its reply that it would not use those contact details further in relation to the UDRP proceeding regarding the disputed domain name <aldisbenefits.com>.

Otherwise, no reply was received to the contentions in the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainants:

- (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 in bad faith.

The Complainants must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based.

A. Identical or Confusingly Similar

The Complainants have established rights in the ALDI trademark.

The Panel finds that the disputed domain name reproduces the Complainant's trademark in its entirety. The addition of "sbenefits" does not prevent a finding of confusing similarity under the Policy which, as recognized by past UDRP panels, involves a "side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7).

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainants to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainants have made a *prime facie* case against the Respondent whom has not been commonly known by the disputed domain name and neither have the Complainants licensed or otherwise authorized the Respondent to use the ALDI name or trademark.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

In addition to that, the lack of any good faith use of the disputed domain name, which is being used in connection with PPC links available at the parked webpage that resolves from the disputed domain name, does not characterize any evidence of 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 ([WIPO Overview 3.0](#), section 2.9).

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainants who are the owners of a trademark relating to the disputed domain name or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

- (ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

- (i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, not having submitted a response;
- (ii) the use of the disputed domain name in connection with a parked webpage displaying PPC links to Complainants' competitors;
- (iii) the well-known status of the Complainants' trademark;
- (iv) the nature of the disputed domain name (reproducing the entirety of the Complainant's trademark albeit with added terms), and the Respondent's likely intention to unduly profit from the value of the Complainant's trademark noting the Respondent's use, suggest that Respondent's registration and holding of the disputed domain name is in bad faith; and
- (v) the indication of what appears to be false contact details, not having the Center been capable of delivering the written notice to the Respondent.

For the reasons as those stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The third element of the Policy has therefore been established.

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 <aldisbenefits.com> be transferred to the First Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: April 11, 2023