

ADMINISTRATIVE PANEL DECISION

Aldi GmbH & Co. KG and Aldi Stores Limited v. Freelancer Salman
Case No. D2023-1469

1. The Parties

The Complainants are Aldi GmbH & Co. KG, Germany and Aldi Stores Limited, United Kingdom, represented by Freeths LLP, United Kingdom ("UK").

The Respondent is Freelancer Salman, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <aldistoreuk.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 11, 2023, 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 April 12, 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 April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 16, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on June 6, 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 first Complainant, Aldi GmbH & Co. KG, is a leading German corporation in grocery retailing. With more than 5,000 stores across the world, it is active in countries, by way of example, such as Australia, Denmark, UK, and the United States of America.

The first Complainant is the owner of several trademark registrations for ALDI alone or with additional terms. As such, in the United Kingdom Intellectual Property Office, ALDI trademark with number UK00002250300 and registration date of March 30, 2001.

The second Complainant is the exclusive licensee of the trademark registrations of the first Complainant in the UK.

The disputed domain name was registered on September 24, 2022, and is inactive.

5. Parties' Contentions

A. Complainants

The Complainants allege that the disputed domain name includes the word "aldi" which is the subject of the Complainants' trademarks. By adding "storeuk" to the disputed domain name, the Respondent suggests that the disputed domain name will host a webpage relating to goods or services, which are specifically sold by the Complainants.

The Complainants insist that the similarity between the disputed domain name and their trademarks is such that Internet users will be confused into believing that the disputed domain name is registered to, or at least operated, authorized or endorsed by the Complainants.

Regarding the second requirement, the Complainants contend that their trademarks rights over ALDI predate the Respondent's registration of the disputed domain name, which was registered on September 24, 2022. The Complainants have not licensed or otherwise authorized the Respondent to use the ALDI name or trademark.

Furthermore, the Complainants allege that none of the circumstances depicted in paragraph 4(c) of the Policy arises in the case and therefore the Respondent has no rights or legitimate interests in the disputed domain name. Thus, the Respondent has no rights in the ALDI trademark, and neither is associated nor connected with the Complainants whatsoever. Nor is there credible evidence that the Respondent is commonly known by the disputed domain name.

Finally, the Complainants aver that the disputed domain name entails an unauthorized use of a sign confusingly similar to ALDI trademark, in direct contravention of the Complainants' trademark rights and rights in passing off. Therefore, it is inevitable that Internet users will be confused into believing that the disputed domain name has some form of association with the Complainants.

The Complainants also submit that the disputed domain name has been (or is planning to be) intentionally used to attract Internet users, for commercial gain, to any website hosted at the disputed domain name by creating a likelihood of confusion with the ALDI trademark as to the source, sponsorship, affiliation or endorsement of the website of the Respondent.

The Complainants also claim a finding of bad registration and use based on the detrimental impact on the reputation and professional activities of the Complainants.

The Complainants suggest that the Respondent might offer the disputed domain name for sale to either the Complainants (or their competitors) at a price higher than the cost of registration and in the hope that the parties bid against each other to secure the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel 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 was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a default, the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Consolidation of the Complainants

As set out in WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.11.1: In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Panel notes that the Complainants are part of a group and have common grievance in the dispute. Indeed, one is the owner of the trademark and the other is a licensee. As set out below, ALDI trademark was targeted and therefore it would be equitable and procedurally efficient to allow consolidation in these circumstances.

B. Identical or Confusingly Similar

The Complainants have shown trademarks rights for UDRP purposes. Accordingly, the first requirement of the Policy consists in a straightforward comparison between the Complainant's trademark and the disputed domain name.

The Panel finds apparent that the mark ALDI is recognizable within the disputed domain name. The mere addition of the terms "store" plus "uk" to the ALDI trademark, does not prevent a finding of confusingly similarity under this first element. See [WIPO Overview 3.0](#), section 1.8.

The Panel also notes that generic Top-Level Domains ("gTLD") are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Panel notes the Respondent's silence in this proceeding despite being duly notified. Thus, the Panel looks at the [WIPO Overview 3.0](#), section 2.1.: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel accepts the Complainants' allegations not to have licensed or otherwise authorized the Respondent to use the ALDI trademark and that the Respondent is not commonly known by the disputed domain name.

Since the disputed domain name is inactive, the Panel finds appropriate to conclude that there is no *bona fide* offering of goods or services. Nothing in the records shows otherwise.

Further, the Panel also notes that the composition of the disputed domain name, comprising the Complainants' ALDI trademark in its entirety combined with the term "store" and the geographical term "uk", carries a risk of implied affiliation with the Complainants. See section 2.5.1. of the [WIPO Overview 3.0](#). This finding is particularly strengthened in connection with the second Complainant since its company name is "Aldi Stores Limited" and it is located in the UK.

Under these circumstances, the Panel finds that a *prima facie* case has been raised against the Respondent, but he did not come forward with relevant evidence showing rights or legitimate interests in the disputed domain name.

Accordingly, the Complainants have demonstrated that the Respondent lacks rights or legitimate interests in the disputed domain name further to the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, the Panel now looks at the third requirement of the test.

The Complainants' rights in the ALDI trademark predate by more than 20 years the Respondent's disputed domain name registration, which took place on September 24, 2022. Besides, previous panels' decisions have acknowledged how ALDI trademark is to be considered well known for UDRP purposes. As such, *Aldi GmbH & Co. KG, and Aldi Stores Limited v. Mr Samm123 Adinn*, WIPO Case No. [D2023-1309](#).

The disputed domain name incorporates the ALDI trademark in its entirety and is to be deemed confusingly similar to the mark as set out in the first requirement above.

The Panel also notes that the disputed domain name mimics somehow the second Complainant corporate name and also refers to the country of its location.

Accordingly, the Panel finds that all the above circumstances lead to conclude that the Respondent had a good knowledge of the Complainants, their trademarks and activities. Therefore, and on balance of probabilities, the Respondent targeted the Complainants' ALDI trademark because he knew or should have known about the Complainants at the moment of the registration of the disputed domain name.

The Panel looks at [WIPO Overview 3.0](#), section 3.3: "...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." See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). These circumstances match with the present case and therefore call for a finding of bad faith.

Therefore, the Complainants have satisfied the requirements of 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 <aldistoreuk.com> be transferred to the second Complainant, Aldi Stores Limited.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: June 20, 2023