

## **ADMINISTRATIVE PANEL DECISION**

**LIDL Stiftung & Co. KG v. BARATTERO FREDERIC**

**Case No. D2023-1591**

### **1. The Parties**

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

The Respondent is BARATTERO FREDERIC, France.

### **2. The Domain Name and Registrar**

The disputed domain name <lidlpurchase.net> 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 12, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2023, 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 amendment to the Complaint on April 19, 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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 17, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on June 1, 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 belongs to the LIDL Group, a global discount supermarket chain based in Germany that operates internationally. It operates more than 10,000 stores in 31 countries with over 300,000 employees. The Complainant also offers various additional services, including a mobile phone network and travel services.

The Complainant and its group own an extensive global trademark portfolio of LIDL trademarks, including:

- European Union Trademark Registration No. 001778679, LIDL, word, registered on August 22, 2002, in classes 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, and 42; and
- European Union Trademark Registration No. 013192752, LIDL, figurative, registered on April 19, 2017, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, and 44, (collectively hereinafter referred as the “LIDL mark”).

Prior decisions under the Policy have recognized the international reputation of the LIDL mark.<sup>1</sup>

The Complainant and its group further own various domain names corresponding to the LIDL mark, which resolve to its online store sites for the countries where its operates, including <lidl.de>, <lidl.pl>, <lidl.fr>, <lidl.ro>, <lidl.es>, and <lidl.com>.

The disputed domain name was registered on March 26, 2023, and it resolves to a parking pay-per-click (“PPC”) page that displays several promotional links concerning third parties’ product catalogs and online supermarkets, as well to various links concerning the LIDL offers, product catalogs and supermarkets.

#### 5. Parties’ Contentions

##### A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain name is confusingly similar to the LIDL mark. The disputed domain name comprises the LIDL mark in its entirety, and the additional term “purchase” that suggests a link to the Complainant and its business. The generic Top-Level Domain (“gTLD”) “.net” does not affect the confusing similarity test.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The LIDL mark is derived from the Complainant’s group co-founder’s name and has no dictionary meaning; it is an inherently distinctive mark and of strong international reputation. The Respondent is not commonly known by the names comprised in the disputed domain name, owns no trademark registration or trade name comprising the term “lidl”, and has no authorization to use the LIDL mark. The Respondent is not affiliated with the Complainant. The disputed domain name is used for a PPC page that competes with and capitalizes on the reputation of the LIDL mark, and misleads Internet users. The disputed domain name has also been used to create an email address from which at least one fraudulent email was sent (on April 6,

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<sup>1</sup> See among others *Lidl Stiftung & Co. KG v. SellDa GmbH*, WIPO Case No. [D2008-0724](#); *LIDL Stiftung & Co. KG v. WhoisGuard Protected, WhoisGuard, Inc. /John Winston*, WIPO Case No. [D2020-2661](#); and *Lidl Stiftung & Co. KG (Lidl International), SNC Lidl (Lidl France) v. Registration Private, Domains By Proxy / Emanuel Rassi*, WIPO Case No. [D2018-1600](#).

2023) in the attempt to deceive one of the Complainant's suppliers. An email with the subject "ORDER" was sent from the address "[...]@lidlpurchase.net" by a person presenting himself as the "Head of Purchasing, LIDL FRANCE", announcing to be wishing to make an order. It is not conceivable any noncommercial or fair use of the disputed domain name by the Respondent because it effectively impersonates or suggests sponsorship or endorsement by the Complainant. The Complainant has requested the Registrant to permanently block or delete the content on the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The disputed domain name is confusingly similar to the reputed LIDL mark, which is internationally well known including in France. It is inconceivable that the Respondent was not aware of the Complainant's trademarks when it registered the disputed domain name. The disputed domain name is being used to configure an email address for sending at least one fraudulent email offering false business opportunities, and to resolve to a PPC parking page that displays sponsored links to competing third parties' supermarket websites, exploiting the Complainant's reputation for commercial gain. A search over the Internet reveals that the Respondent's name has been involved in sending fraudulent emails pretending to be the purchasing manager of third parties' companies. There are two fraud email addresses reported on the platform Scam Watcher in relation to the Respondent's name.

The Complainant has cited previous decisions under the Policy and various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

### **A. Identical or Confusingly Similar**

The Complainant indisputably has rights in the registered trademark LIDL, both by virtue of its trademark registrations for this brand, and as a result of its continuous use of this trademark in the market.

The disputed domain name incorporates the LIDL mark in its entirety, and the term "purchase". The Complainant's trademark LIDL is recognizable in the disputed domain name, and the gTLD ".net" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11, [WIPO Overview 3.0](#).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

### **B. Rights or Legitimate Interests**

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name (providing the circumstances of paragraph 4(c) of the Policy, without limitation), in order to rebut the Complainant's *prima facie* case. See section 2.1, [WIPO Overview 3.0](#).

However, the Respondent has not replied to the Complainant's contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel notes that the Respondent's name revealed by the Registrar verification shares no similarity with the terms included in the disputed domain name, and the term "lidl" is not a dictionary term.

The Panel further considers that the Complainant has constructed a *prima facie* case evidencing that the Respondent has not been authorized to use the LIDL mark, there is no relationship between the Parties, and the disputed domain name has not been used in connection to a *bona fide* offering of goods or services.

The Panel notes that the disputed domain name resolves to a parking page displaying PPC links to the Complainant's websites, and to third parties' competing supermarket online stores, which competes with the Complainant's business. The use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9, [WIPO Overview 3.0](#).

The Panel further finds that disputed domain name generates an affiliation with the Complainant and its trademark. The fact that the disputed domain name incorporates the LIDL mark adding a term ("purchase") that may related to the Complainant's business, generates an implied affiliation that suggests that the disputed domain name may be owned or sponsored by the Complainant.

The Panel further notes that, according to the evidence provided by the Complainant, the disputed domain name has been used to impersonate the Complainant or one of the LIDL Group's companies by creating an email address from which at least one fraudulent email was sent in the attempt to deceive one of the Complainant's suppliers. Such use of the disputed domain name for an illegal activity can never confer rights or legitimate interests. See section 2.13, [WIPO Overview 3.0](#).

It is further remarkable that the Respondent has chosen not to reply to the Complaint, not providing any evidence of any rights or legitimate interests in the disputed domain name.

Therefore, the circumstances of this case lead the Panel to conclude that nothing in the case file gives any reason to believe that the Respondent has any rights or legitimate interests in respect of the disputed domain name, and the second element of the Policy under paragraph 4(a)(ii) has been established.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

- (i) the LIDL mark is worldwide well known (including in France, where the Respondent is located according to the Registrar verification), and this trademark has strong presence over the Internet, so that any search over the Internet reveals the Complainant and its trademark;

- (ii) the disputed domain name incorporates the LIDL mark and a term (“purchase”), which denotes a risk of confusion or implied association, and creates the impression that the disputed domain name is owned or sponsored by the Complainant or one of the LIDL Group companies;
- (iii) the disputed domain name resolves to a parking page displaying PPC links to the Complainant’s websites and to third parties’ websites that compete with the Complainant in the same supermarket business;
- (iv) according to the evidence provided by the Complainant, the disputed domain name has been further used to configure an email address and to send at least one deceiving email to one of the Complainant’s suppliers; and
- (v) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant’s assertions of bad faith, choosing not to reply to the Complaint.

It is further remarkable that, according to the evidence provided by the Complainant, the Respondent’s name has been involved in previous cases of impersonation related to third parties’ trademarks and websites. The Panel has corroborated that the Respondent’s name (revealed by the Registrar verification) is mentioned in two suspected scam email claims in the platform Scam Watch.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and has been used targeting the Complainant’s reputed trademark in bad faith, in an effort to take unfair advantage of its reputation by creating a false affiliation to this brand for a commercial gain, which constitutes bad faith under the Policy.

The Panel further finds that the circumstances of this case indicate that the disputed domain name has been used or intended to use in any type of fraud or phishing scheme, which constitutes bad faith under the Policy. See section 3.4, [WIPO Overview 3.0](#).

The Panel notes that the PPC page linked to the disputed domain name indicates that “The Sponsored Listings displayed above are served automatically by a third party. Neither Parkingcrew nor the domain owner maintain any relationship with the advertisers”. However, neither the fact that such links may have been generated by a third party, nor the fact that the Respondent may not have directly profited from these promotional links, would by itself prevent a finding of bad faith. See section 3.5, [WIPO Overview 3.0](#).

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and used in bad faith.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and used the disputed domain name in bad faith under 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 <lidlpurchase.net> be transferred to the Complainant.

*/Reyes Campello Estebaranz/*

**Reyes Campello Estebaranz**

Sole Panelist

Date: June 13, 2023