

ADMINISTRATIVE PANEL DECISION

Lidl Stiftung & Co. KG v. 郭星 (Xing Guo)

Case No. D2022-4134

1. The Parties

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

The Respondent is 郭星 (Xing Guo), China.

2. The Domain Name and Registrar

The disputed domain name <lidlonline.shop> is registered with Alibaba Cloud Computing Limited (阿里云计算有限公司 (万网)) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on November 2, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 4, 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 amendment to the Complaint in English on November 9, 2022.

On November 4, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 7, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 November 15, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on December 15, 2022. 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 discount supermarket chain based in Germany. The LIDL-Group operates more than 10,000 stores with over 300,000 employees.

The Complainant is the owner of the LIDL trade mark in a range of jurisdictions, including German Trade Mark Registration No. 2006134 registered on November 11, 1991 in classes 29 and International Registration No. 974355 registered on May 9, 2008, designating, *inter alia*, China, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 41.

The Complainant owns a number of domains, including <lidl.de>, <lidl.pl>, <lidl.fr>, <lidl.es>, <lidl.com> and <lidl.asia>.

The Respondent is 郭星 (Xing Guo), China.

The disputed domain name was registered on September 17, 2022, and does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the LIDL mark as it comprises of the LIDL mark in its entirety. The additional term "online" does not prevent a finding of confusing similarity. The combination of the LIDL mark with the descriptive term "online" and the Top-Level Domain ("TLD") ".shop" leads Internet users to think of a LIDL online shop. Further, the specific TLD ".shop" does not affect the identity or similarity between the disputed domain name and the LIDL mark.

The Complainant further alleges that the Respondent has no rights or legitimate interest in the disputed domain name. The combination of the LIDL mark with the descriptive term "online" and the TLD ".shop" leads to the suggestion of an endorsement by the Complainant as Internet users will expect an online shop of the Complainant offering its products. Therefore, the disputed domain name cannot be used fairly by the Respondent. As the disputed domain name does not resolve to an active website, there is no indication of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Further, no permission to use "lidl" was granted by the Complainant, and the Respondent is not commonly known by "lidl" or "lidlonline" or "lidlonline.shop".

The Complainant finally asserts that the mere registration of the disputed domain name that is identical or confusingly similar to the famous LIDL mark plus a descriptive term by an unaffiliated entity can itself create a presumption of bad faith. The Complainant's use and registration of the famous LIDL mark predated the registration of the disputed domain name by decades. Together with the fact that the Respondent added the word "online" and TLD "shop" to the disputed domain name, it leads to the assumption that the Respondent had knowledge of the Complainant's business and marks. Further, the passive holding of the disputed domain name does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarised below:

- (a) the Complainant is a company located in Germany and has no familiarity with the foreign language;
- (b) the Complainant would have to retain specialized translation services at a disproportionately high cost which would impose a burden on the Complainant in order to proceed in the foreign language; and
- (c) the Respondent has chosen to register a domain name that includes English terms ("online" and ".shop"), which strongly suggests that the Respondent has familiarity with English.

It is established practice to take paragraphs 10(b) and 10(c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is a company based in Germany. Requiring the Complainant to translate the Complaint in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the Respondent's choice of English words for the disputed domain names indicate that the Respondent is familiar with the English language;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the language of the proceeding, the Complainant requested English to be the language of the proceeding, but the Respondent did not protest against this request;
- (d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese, and has been notified of his or her default; and
- (e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the LIDL mark.

The Panel notes that the LIDL mark is wholly encompassed within the disputed domain name. The LIDL mark is instantly recognizable as the most distinctive element in the disputed domain name. In cases where a domain name incorporates the entirety of a trade mark, 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. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is accepted by previous UDRP panels that the addition to the complainant's trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity between the domain name and the complainant's trade mark under the first element of the Policy. See section 1.8 of the [WIPO Overview 3.0](#). As such, the Panel finds the additional term "online" in the disputed domain name does not preclude a finding of confusing similarity between the LIDL mark and the disputed domain name.

Lastly, it is permissible for the Panel to disregard the TLD in the disputed domain name, *i.e.* ".shop". It is accepted by UDRP panels that the practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to "new gTLDs") and the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment to the first element. See sections 1.11.1 and 1.11.2 of the [WIPO Overview 3.0](#).

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the LIDL trade mark, whereas the Respondent seems to have no trade mark rights, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

There is no indication to show that the Respondent is commonly known by the disputed domain name, owns trade mark registrations, or otherwise has rights or legitimate interests in the LIDL mark. Further, the Complainant has not granted the Respondent any license or authorization to use the LIDL mark or register the disputed domain name. On the other hand, the Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the term "lidl" in the disputed domain name, and none is apparent except due to its value in connection with the Complainant's LIDL mark. None of the circumstances in paragraph 4(c) of the Policy are present in this case.

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's LIDL trade mark has been widely registered around the world. The disputed domain name was registered well after the registration of the Complainant's LIDL trade mark. Through extensive use and advertising, the Complainant's LIDL trade mark is known throughout the world, including China where the Respondent is apparently located. Moreover, the term "lidl" is not merely a surname. Search results using the key word "lidl" on the Internet direct Internet users to the Complainant and its products and

services, which indicates that an exclusive connection between the LIDL trade mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's LIDL trade mark when registering the disputed domain name, see section 3.2.2 of the [WIPO Overview 3.0](#).

Section 1.11.2 of the [WIPO Overview 3.0](#) states that “in cases where the TLD corresponds to the complainant's area of trade so as to signal an abusive intent to confuse Internet users, panels have found this relevant to assessment under the third element”. The Panel finds it is likely that the choice of the TLD, *i.e.* “.shop” by the Respondent was meant to reinforce the targeting of the Complainant's LIDL trade mark because the Complainant's is a supermarket chain with many stores and shops. See *ageas SA/NV v. Tri Nguy\u1ec5n*, WIPO Case No. [D2019-2946](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that “[...]mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. In this case, the disputed domain name completely incorporates the LIDL trade mark, meaning that bad faith registration of the disputed domain name can be presumed.

In addition, the Panel finds that although the disputed domain name does not resolve to any website, such inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considers the degree of distinctiveness and reputation of the Complainant's LIDL mark, as well as the Respondent's failure to respond in the face of the Complainant's allegations of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Therefore, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) 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 <lidlonline.shop> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: December 29, 2022