

## **ADMINISTRATIVE PANEL DECISION**

Aldi GmbH & Co. KG and Aldi Stores Limited v. Host Master,  
Transure Enterprise Ltd  
Case No. D2023-0116

### **1. The Parties**

The Complainant is Aldi GmbH & Co. KG, Germany and Aldi Stores Limited, United Kingdom, represented by Freeths LLP, United Kingdom.

The Respondent is Host Master, Transure Enterprise Ltd, United States of America.

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

The disputed domain name <aldidrpsip.com> is registered with Above.com, Inc. (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 18, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 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 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 January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent's default on February 16, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on February 23, 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 Aldi GmbH & Co. KG (hereinafter referred to as First Complainant) and Aldi Stores Limited (hereinafter referred to as Second Complainant), collectively referred to as “the Complainants”, are international group of grocery retailers with over 5,000 stores in various European countries, United States and Australia. Their ALDI brand is well-established and was one of the most popular brand in the United Kingdom supermarket sector in Q1 2022.

The First Complainant Aldi GmbH & Co. KG owns various registered trademarks that contain the ALDI sign, including the following:

- United Kingdom Trademark Registration No. 00002250300 for the word ALDI, registered since March 30, 2001, for goods and services in Classes 01, 03, 05, 06, 11, 16, 21, 24, 25, 29, 30, 31, 32, 33, 34 and 35, and
- European Union Trademark Registration No. 002071728 for the word ALDI, registered since April 14, 2005, for goods in Classes 03, 04, 07, 09, 16, 24, 25, 29, 30, 31, 32, 33, 34 and 36.

The Second Complainant Aldi Stores Limited is the exclusive licensee of these marks in the United Kingdom and has been trading under their current corporate name since 1989. The Complainants are part of the same corporate group and both Complainants have a specific common grievance against the Respondent.

The disputed domain name was registered on May 13, 2022, and directs to a website displaying sponsored links.

#### 5. Parties' Contentions

##### A. Complainant

The Complainants contend that First Complainant Aldi GmbH & Co. KG owner and Second Complainant Aldi Stores Limited licensee of various registered trademarks that include the sign ALDI. The Complainants are well-known in the grocery retailing sector. The Complainants contend that the disputed domain name includes the word ALDI, which is identical to the Complainants name and trademarks. The addition of part “drpship” which would be likely understood as “drop ship”, a common method of e-commerce, enhances confusion, suggesting that the domain name will host an authorized webpage relating to the Complainants' goods or services sold via drop shipping. The similarity between the domain name and the trademarks is such that Internet users will be confused into believing that the domain name is associated with the Complainants. The Complainants have no connection or association with the Respondent, and the Respondent has no rights in the domain name.

The Complainants rights in the trademarks and the ALDI name precede the registration of the disputed domain name, which occurred on May 13, 2022. The Complainants have not given the Respondent permission to use the ALDI name or trademark. Additionally, there is no evidence that the Respondent has used the disputed domain name for a *bona fide* offering of goods or services, has been commonly known by the disputed domain name, or has used the disputed domain name for legitimate noncommercial or fair purposes as defined in the Policy. As a result, the Respondent lacks any right or legitimate interest in the disputed domain name and has no connection with the Complainants.

The Complainants allege that the disputed domain name has been registered and has been used in bad faith, which is in contrary of the Complainants' trademark rights and rights in passing off. The Complainants contend that the disputed domain name will confuse Internet users into believing that there is some association with the Complainants, which unfairly takes advantage of the Complainants' rights. The Complainants further submit that the disputed domain name has been, or will be, intentionally used to attract Internet users for commercial gain by creating confusion as to the source, sponsorship, affiliation, or endorsement of the website. The Complainants argue that the reputation of the trademarks is harmed by association with the disputed domain name, and that there is a detrimental impact on the Complainants

reputation and professional activities. The Complainants also suggest that the disputed domain name may have been registered with the intention of selling it at a higher price to the Complainants or its competitors.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

Even if the Respondent did not file a Response to the Complainants' contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainants.

"A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable", as indicated in paragraph 15(a) of the Rules.

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 trade mark 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 has been registered and is being used by the Respondent in bad faith.

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

Paragraph 4(a)(i) of the Policy requires a complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. A trademark registration provides a clear indication that the rights in the trademark belong to the complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1).

Aldi GmbH & Co. KG is the owner and Aldi Stores Limited is the licensee of registered ALDI trademarks which are under common the Complainants' control. In the present case, the Panel finds that the Complainants have established their rights in the ALDI trademarks based on previous trademark registrations, in particular in European Union, which preceded the disputed domain name for at least 21 years.

The mere fact that disputed domain name wholly incorporates the Complainants' trademark may be sufficient to establish confusing similarity for the purpose of the Policy, despite the addition of another term. In the case at hand, the additional term "drpship" does not prevent a finding of confusing similarity. Additional terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) do not prevent a finding of confusing similarity, as noted in section 1.8 of the [WIPO Overview 3.0](#).

Furthermore, it is well accepted practice by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark (see section 1.11 of the [WIPO Overview 3.0](#)). For that reason, the Panel accepts not to take gTLD ".com" when assessing confusing similarity of the disputed domain name. Taking into account all of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainants ALDI trademarks.

The Complainants' ALDI trademark is clearly recognizable within the disputed domain name and accordingly, the Panel finds that the Complainants have satisfied the first requirement that the disputed domain name is identical or confusingly similar to the Complainants' registered trademark, under paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence to rebut that presumption. If the respondent fails to do so, a complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1).

The Respondent failed to provide any evidence of authorization to use the ALDI trademarks or to register a domain name containing ALDI trademark.

According to the Complainants, it seems that the Respondent is not associated or connected with the Complainants in any way, and the Complainants have not granted the Respondent any license or authorization to utilize or register any domain name that includes the Complainants' trademarks. The Respondent has further failed to provide a response to the Complaint, thereby failing to present any information or factors that could potentially justify prior rights or legitimate interests in the disputed domain name. Additionally, there appears to be no evidence of the Respondent engaging in any legitimate or genuine use of the disputed domain name, whether for noncommercial or *bona fide* activities.

The Panel finds that the nature of the disputed domain name, which consists of the Complainants' ALDI trademark and of the additional term "drpship", strongly indicates the affiliation with the Complainants and for that reason a fair use cannot be constituted when the disputed domain name effectively impersonates or suggests affiliation with the Complainants (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Based on the above, the Panel finds that the second element of paragraph 4(a)(ii) of the Policy has been met by the Complainants.

## C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires a complainant to demonstrate that the respondent registered and is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1, states 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".

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the 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) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The fact that the disputed domain name comprises a combination of the Complainants' ALDI trademark and the additional part "drpship" which is closely associated with the Complainants' activities, reflects that the

Respondent is very familiar with the Complainants and their ALDI trademark. With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainants and their ALDI trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainants and their rights and reputation in the ALDI trademark at the time the disputed domain name was registered. Therefore, the Panel holds that the disputed domain name was registered in bad faith.

The disputed domain name comprised pay-per-click ("PPC") links, were in direct competition with the Complainants

As described under paragraph 4(b)(iv) of the Policy, the Respondent is therefore using the disputed domain name to intentionally attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainants' ALDI mark.

Furthermore, the Complainants' ALDI trademark should be observed as a trademark that is sufficiently distinctive and that enjoys certain level of reputation; the Respondent has failed to provide any response to the Complaint and has therefore failed to provide any justification for the registration and use of the disputed domain name; it seems rather unlikely that even if the disputed domain name was put to actual use, such use would be in good faith. Based on the foregoing reasons, the Panel finds that the disputed domain name in the present case should be observed as use in bad faith.

The Panel concludes that the disputed domain name was registered and used in bad faith and that consequently, the Complainants have satisfied the requirement under 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, <aldirpship.com>, be transferred to the First Complainant, Aldi GmbH & Co. KG.

*/Petra Pecar/*

**Petra Pecar**

Sole Panelist

Date: March 8, 2023