Decision for dispute CAC-UDRP-102684

Case number	CAC-UDRP-102684
Time of filing	2019-09-25 12:00:07
Domain names	lindtus.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Carolina Rodrigues, Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks LINDT, such as international trademark no. 217838, registered on March 2, 1959 for chocolate products in class 30 designating. This mark has duly been renewed and is in force.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1. The Complainant is a well-known major chocolate maker based in Switzerland established in 1889. It currently employs more than 14,000 people, has established offices in 18 countries and has also more than 410 own shop worldwide. In the first half of the year 2019, the Group achieved sales of CHF 1.76 billion

2. It results from the registrar verification that the date of registration of the disputed domain name by the current registrant was March 20, 2019.

3. According to the undisputed evidence provided by the Complainant, the disputed domain name resolves to parking page displaying Pay-Per-Click links (“PPC”) named “Lindt Lindor”, “Lindor Chocolate”, “Chocolat Lindt” or “Chocolat”.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1.
The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant's registered trademark LINDT is identically included in the disputed domain name. It is the view of this Panel that the combination of the trademark LINDT with the geographic term "us" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark. The term "us" is the two-letter country abbreviation for the United States of America. It will therefore be understood as a mere geographic term (cf. Jcdecaux SA v. Whois Privacy Protection Foundation / Anderson Paul, WIPO Case No. D2019-1143; LEGO Juris A/S v. Kamran Khan, WIPO Case No. D2019-0013; BeSweet Creations LLC v. Ahmed Aludayni, WIPO Case No. D2019-0306).

2.
In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy. Furthermore, it results from the evidence provided by the Complainant that the disputed domain name resolves to a parking page with PPC-links named "Lindt Lindor", "Chocolat Lindt" or "Chocolat" and therefore referring to the Complainant, its trademarks LINDT and its products. Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host such 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, as it is the case for the parking page at issue. Finally, a parking page with commercial PPC links does per se not constitute legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

3.
Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith. It is indeed satisfied that the Respondent has registered the disputed domain name for the mere purpose of creating a risk of confusion

and diverting the Internet users to its website (see paragraph 4(b)(iv) of the Policy).

The Complainant's trademarks have existed for decades and are widely known worldwide. In addition, the Panel notes that the disputed domain name leads to a parking page where links connected with LINDT and CHOCOLATE in general are offered. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name contained the Complainant's LINDT trademark when it registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed LINDT mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith. The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are (i) the high degree of distinctiveness and the worldwide reputation of the Complainant's mark, (ii) the Respondent's failure to submit a response or to provide any evidence of actual or contemplated good faith use, (iii) the Respondent concealing its identity behind a privacy shield.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LINDTUS.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2019-11-12

Publish the Decision