Decision for dispute CAC-UDRP-102952

Case number	CAC-UDRP-102952
Time of filing	2020-03-27 15:00:45
Domain names	lindt175.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Mattia Lumini

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

International trademark No. 576529 LINDT, registered on August 30, 1959.

FACTUAL BACKGROUND

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

Founded in 1845, the Complainant is a well-known chocolate maker based in Switzerland, perceived as a leader in the market of premium quality chocolate and having around 500 shops and cafes worldwide. The Complainant owns numerous trademark registrations for LINDT, including International trademark LINDT No. 576529 registered on August 30, 1959 (designating Italy, the country of the Respondent). Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world, as acknowledged in CAC Case No. 102684 Chocoladefabriken Lindt & Sprungli AG vs Carolina Rodrigues.

2020 is the 175th anniversary of the Complainant.

The disputed domain name <lindt175.com> was registered on January 4, 2020. It resolves to an active website having the

look and feel of the Complainant's website, displaying Complainant's trademarks, copyrighted images, fonts and style. The content relates to the Complainant's "big plan to celebrate its birthday" and contains a link to one of the official websites of the Complainant at "www.lindt-spruengli.com". It also contains links to the websites of several well-known competitors of the Complainant. It gives the legal address in Switzerland of the Complainant and under the heading DOMAIN FOR SALE provides a link to an email address to "contact for purchasing this domain".

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

In accordance with paragraph 4(a) of the Policy, to obtain transfer of a domain name, a complainant must prove the following three elements: (i) the respondent's 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 the domain name; and (iii) the respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, "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".

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's LINDT trademark, since it incorporates the Complainant's well-known trademark LINDT in its entirety with the addition of the number "175". See F. Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org/Conan Corrigan, WIPO case No. D2015-2316: "It is also well-established that where a domain name incorporates a complainant's well-known and distinctive trademark in its entirety, it is confusingly similar to that mark despite the addition of words or numbers such as, in this case, "uk10". The top-level suffix ".com" may be disregarded for the purpose of determining whether the disputed domain name is identical or confusingly similar. See Credit Mutuel Arkea v. Domain Administration, CAC Case No. 102345.

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by a respondent,

shall demonstrate rights to or legitimate interests in a domain name for purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered many years after the registrations of the Complainant's LINDT well-known trademarks; the Complainant has not licensed or authorized the Respondent to register or use the disputed domain name; there is no evidence that the Respondent is known by the disputed domain name or owns any registered trademark including the term "lindt175" or "lindt175.com"; further, the Complainant did not authorize the creation of the Respondent's website and links to the Complainant's website; the use of the disputed domain name to resolve to a website with links to competitors' products does not constitute use in connection with bona fide offering of goods or services, or for a legitimate noncommercial or fair use.

The Complainant's assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, including:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.

Based on the fame of the Complainant's LINDT trademark and the content of the Respondent's website, the Panel is satisfied that the Respondent clearly had the Complainant, its famous mark and the importance of its anniversary in mind when registering the disputed domain name at the start of that anniversary year and has used it to resolve to an active website mimicking the look and feel of the Complainant's website in order to catch the attention of Internet users and to represent that that the website is connected to, or managed by, the Complainant. The links to competitors in the same field of activity as the Complainant indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or of a product or service on such website. For a similar situation see MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar, WIPO Case No. D2012-0691.

Accordingly the Panel finds that the disputed domain name has been registered and is being used in bad faith.

It is unnecessary to consider the correspondence between the parties and the Respondent's history of registering domain names incorporating the famous brands of others.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LINDT175.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2020-05-07

Publish the Decision