Decision for dispute CAC-UDRP-106270

Case number	CAC-UDRP-106270
Time of filing	2024-02-21 09:39:24
Domain names	lindt.cc

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	Cao Cong Gang

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Chocoladefabriken Lindt & Sprüngli AG (the "Complainant") is the owner of the European Union trademark LINDT, registered on September 7, 1998 (Reg. No. 134007), in class 30. Complainant also owns many other national and international registrations of this trademark.

FACTUAL BACKGROUND

The Complainant is the owner of the European Union trademark LINDT, registered on September 7, 1998 (Reg. No. 134007), in class 30. There are many other national and international registrations of this trademark.

The Complainant also owns domain names containing the trademark LINDT, such as the domain names <lindt.com>, <lindt.ch>, <lindt.cn>, etc.

The Complainant, founded in 1845, is globally well-known as the leading premium quality chocolate maker based in Switzerland.

The disputed domain name <lindt.cc> was registered on March 3, 2023, i.e. many years after the first registration of the Complainant's LINDT globally well-known trademark, and resolved, firstly, to the pay-per-click website featuring sponsored links to competing sites and services (e.g., manufacturers/sellers of chocolate), secondly, to the disputed domain name's landing page

displaying the link and text ‘Buy this domain [/] The owner of lindt.cc is offering it for sale for an asking price of 1999 USD!’.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 Complainant filed the Complaint in English rather than in Chinese (i.e. the language of the registration agreement). Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or otherwise specified in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their respective cases.

The Complainant filed its Complaint in English and then requested that English be the language of the proceeding.

The Complainant noted the following factors supporting English as the fair language of the proceeding: (a) the disputed domain name resolves to a site which brandishes text in English, including: ‘Buy this domain’ and ‘The owner of lindt.cc is offering it for sale for an asking price of 1999 USD!’; (b) the disputed domain name only consists of Latin characters, rather than Chinese script; (c) the Complainant and its representatives are not based in China and cannot communicate in Chinese; (d) the name servers of the disputed domain name point to <sedoparking.com> services (a website in the English language); (e) the Respondent Cao Cong Gang has been involved in several previous UDRP proceedings which have been held in English and in none of the proceedings has the Respondent objected to the language being English. In view of the above, the Complainant submits that: (i) the Respondent likely has some understanding of English; and (ii) the Complainant would be unduly disadvantaged by having to proceed in Chinese (i.e., by having to arrange and pay for the translation of the Complaint or annexes).

The Panel agrees with the factors presented by the Complainant and also admits additional important factors in favour of the Complainant’s option of English language for this proceeding: (a) the Respondent has been given the opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding; (b) the Respondent has not responded to the Complainant’s request for a change of the language from Chinese to English.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

The Panel has also taken into consideration the fact that insisting the Complaint and all supporting documents to be re-filed in Chinese would cause an unnecessary burden of cost to the Complainant and would unnecessarily delay the proceeding which would be contrary to Paragraph 10(b) and (c) of the Rules.

Having considered all the above matters, the Panel determines under paragraph 11(a) of the Rules that (i) it will accept the Complaint and all supporting materials as filed in English; and (ii) English will be the language of the proceeding and the decision

will be rendered in English.

In view of all of the above, 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

The disputed domain name is identical to the Complainant's trademark LINDT. The Complainant's trademark is included to the disputed domain name in its entirety. It is well established in the UDRP case law that the addition of a country code Top-Level Domain (ccTLD), here <.cc> (the ccTLD for the Cocos (Keeling) Islands), is typically disregarded under the first element when considering the confusing similarity between the Complainant's trademark and the disputed domain name.

The Panel acknowledges that the Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, the Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademarks in any manner, including in domain names. The Respondent's name (Cao Cong Gang) does not resemble the disputed domain name in any manner. Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use.

On these bases, the Panel concludes that the Respondent does not have any rights or legitimate interests in regard to the disputed domain name.

As no administratively compliant response has been provided to the Panel and the prima facie evidence was not challenged by the Respondent, the Panel concludes that the Respondent meant Complainant's trademark LINDT, when he/she registered the disputed domain name <lindt.cc> (see WIPO Overview 3.0, para. 3.1.3 and 3.2). Previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Accordingly, the Panel finds that the disputed domain name was registered in bad faith.

The Panel also finds that the disputed domain name was used in bad faith. Firstly, the disputed domain name was used as the pay-per-click website featuring sponsored links to competing sites and services (e.g., manufacturers/sellers of chocolate). This means that the Respondent could have obtained financial gain by advertising the competing sites on the website associated to the disputed domain name. Therefore, the Respondent was using the disputed domain name to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's LINDT trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (para. 4(b)(iv) of the Policy). Secondly, the disputed domain name was used as the landing page displaying the link to point to <sedoparking.com> services and text 'Buy this domain [/] The owner of lindt.cc is offering it for sale for an asking price of 1999 USD!'. These circumstances indicate that the Respondent has acquired the disputed domain name primarily for the purpose of selling it to the Complainant who is the owner of the trademark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name (see para. 4(b)(i) of the Policy). Although Respondent's offer of the disputed domain name for sale was not made specifically to the Complainant or its competitor, "offers for sale to the public may nevertheless constitute evidence of bad faith under the Policy […] The offering for sale of a domain name, even to a third party, supports bad faith" (see eg. WIPO Case No. D2020-0668).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindt.cc**: Transferred

PANELLISTS

Name	**Darius Sauliūnas**

DATE OF PANEL DECISION 2024-03-18

Publish the Decision