Decision for dispute CAC-UDRP-106271

Case number	CAC-UDRP-106271
Time of filing	2024-02-19 16:25:49
Domain names	lindorchocolates.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	Jose Salcedo

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

The Complainant is the owner of several trademarks bearing “LINDOR”, such as the international trademark “LINDOR” – Reg. No 145636 – registered on February 28, 1950 and United States of America Trademark No. 1729638 "LINDOR" (word mark), registered on November 3, 1992, both in international class 30.

FACTUAL BACKGROUND

The Complainant is a Swiss chocolatier and confectionery company, with registered address in Kilchberg. The Complainant is a company leader in the market for premium quality chocolate, offering a large selection of products in more than 120 countries around the world. One of the Complainant's most successful products is its popular LINDOR chocolate.

The Complainant uses its trademarks “LINDOR” for its products.

The disputed domain name has been registered with the Respondent on April 14, 2023. At the moment it does not lead to an active

website, whereas it used to lead to a parking page.

PARTIES CONTENTIONS

The Complainant contends 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 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

As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. Thus, the Panel accepts the contentions of the Complainant as admitted by the Respondent.

I. The disputed domain name is confusingly similar to the trademark “LINDOR” of the Complainant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid rights for the trademark “LINDOR”. The disputed domain name includes the Complainant's trademark in its entirety. Further, the addition of the descriptive term “chocolates” is not sufficient to distinguish the disputed domain name from the trademarks. In fact, the word “chocolates” accurately describes the business operated by the Complainant. Furthermore, the addition of the gTLD suffix “.com” is not sufficient to escape the finding that the disputed domain name is identical to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name.

Moreover, the disputed domain name does not correspond to the name of the Respondent, nor is he commonly known as “LINDOR”.

Furthermore “LINDOR” has no meaning in English language.

Summarised, there is no evidence for a use of the disputed domain name for any bona fide offer of goods or services or a legitimate non-commercial or fair use.

III. The disputed domain name has been registered and is being used in bad faith within the meaning of the policy.

The Complainant’s trademark “LINDOR” is widely known. Given the distinctiveness of the Complainant's trademark and reputation, it can be concluded that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. As the appellant has argued, the internet search for "LINDOR" and "LINDORCHOCOLATES" would have drawn the Respondent's attention to the Complainant's trademark.

The non-use of a domain name does not preclude a finding of bad faith. Instead, the following conditions are indications for the assumption of bad faith: a high degree of distinctiveness or reputation of the Complainant's trademark, a failure by the Respondent to file a response or provide evidence of actual or intended bona fide use, concealment of the Respondent's identity or use of false contact information (which demonstrably violates its registration agreement), and the unlikelihood of bona fide use of the disputed domain name.

The Complainant's mark has a high degree of recognition and is, thus, a well-known trademark. The Respondent did not file a response and has not provided evidence of actual or intended bona fide use. The Respondent uses a data protection service to disguise its identity.

In view of the fact that the Respondent uses a trademark which is a neologism and has attached to it a word describing the products sold under that trademark by the Complainant, it is concluded that it cannot be assumed that the Respondent was not aware of the Complainant’s trademark at the time of the registration of the disputed domain name and while using it and that the adoption of the trademark together with the word “chocolates” could be a mere coincidence. As in the case of the Respondent, all criteria indicating bad faith listed above are fulfilled, even the actual non-use of the disputed domain name (inactive website) does not contradict the assumption of bad faith use of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindorchocolates.com**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2024-04-08

Publish the Decision