Decision for dispute CAC-UDRP-106392

Case number	CAC-UDRP-106392
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Domain names	linndt.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	felipewell : felipewell

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's registered trademarks for LINDT include

Trademark	Origin	Registration Number	Registration Date	Class(es) Covered
LINDT	Germany	91037	27/09/1906	30
LINDT	United States	87306	09/07/1912	30
LINDT	Canada	UCA26258	17/10/1946	30
LINDT	International	217838	02/03/1959	30

LINDT	Switzerland	2P-349150	29/10/1986	30, 32
LINDT	International	622189	12/07/1994	30
LINDT	Australia	704669	14/03/1996	30
LINDT	European Union	000134007	07/09/1998	30
LINDT	International	936939	27/07/2007	6, 14, 16, 18, 21, 25, 28, 41

- The Complainant and its affiliated companies/subsidiaries hold domain names which include its LINDT mark include **<lindt.com>**, **<lindt.ch>**, **<lindt.co.uk>**, **<lindt.it>**, **<lindtusa.com>**, **<lindt.ca>**, **<lindt.com.br>**, **<lindt.jp>**, **<lindt.cn>** and **<lindt.com.au>** among others.

FACTUAL BACKGROUND

The Complainant, founded in 1845, is a well-known chocolate maker based in Switzerland. As a leader in the market of premium quality chocolate, the Complainant has 11 production sites in Europe and the United States and its more than 2,500 products are distributed via 28 subsidiaries, 500 own retail shops and a comprehensive network of more than 100 distributors in over 120 countries. The Complainant has more than 14 thousand employees and made a revenue of CHF 5.2 billion in 2023. Over the years, the Complainant has expanded its brand portfolio abroad and acquired chocolate businesses including Hofbauer and Küfferle (1994), Caffarel (1997), Ghirardelli (1998) and Russell Stover (2014).

The Complainant is consistently featured in lists collating the largest and most popular global chocolate brands/manufacturers in the world.

The Complainant has a strong social media presence with, for example, seven million followers on Facebook (facebook.com/Lindt), more than 150 thousand followers on Instagram (www.instagram.com/lindt/), and over 120 thousand followers on LinkedIn (www.linkedin.com/company/lindt-&-sprungli).

The Complainant has been a successful complainant in many previous domain name dispute proceedings involving the LINDT brand. These decisions include, among others:

- Chocoladefabriken Lindt & Sprüngli AG v. Mattia Lumini, CAC-UDRP-102952 (2020).
- Chocoladefabriken Lindt & Sprüngli AG v. Carolina Rodrigues, Fundacio Comercio Electronico, CAC-UDRP-102684 (2019).
- Chocoladefabriken Lindt & Sprüngli AG v. vildan erdogan, CAC-UDRP-101809 (2018).
- Chocoladefabriken Lindt & Sprüngli AG Luo Ming, WIPO Case No. D2016-2529.

Chocoladefabriken Lindt & Sprüngli AG v. Sebastian Kochan, WIPO Case No. D2016-184.

PARTIES CONTENTIONS

The Complainant contends:

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- The Complainant holds many trademark registrations for the LINDT term, which cover numerous jurisdictions. The Complainant also relies on the goodwill and recognition that it has attained under the LINDT brand, which has become a distinctive identifier of its goods and services.
- The Complainant submits that it satisfies the identity/confusing similarity requirement of the first element. The disputed domain name's second level consists of a misspelt version of the Complainant's LINDT mark (the addition of another 'n' after the 'i'). From a side-by-side comparison, the Complainant's mark is clearly recognisable in the string (see WIPO Overview 3.0, section 1.7). Panels have also consistently held that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered confusingly similar for the purposes of the first UDRP element (see WIPO Overview 3.0, section 1.9 and, for example, ARCELORMITTAL (SA) v. michael scout, CAC-UDRP-104428 (2022)).

The Complainant requests that the Panel disregards the domain name's '.com' extension. This forms a standard registration requirement and as such is disregarded under the first element confusing similarity test (see WIPO Overview 3.0, section 1.11.1).

Given the above, the Complainant requests that the Panel finds the disputed domain name confusingly similar to the Complainant's mark for the purposes of satisfying paragraph 4(a)(i) of the Policy.

The Respondent has no rights or legitimate interests in respect of the disputed domain name;

The Complainant submits that the Respondent lacks rights or legitimate interests in the disputed domain name.

To the best of the Complainant's knowledge, the Respondent has not registered any trademarks, nor does the Respondent have unregistered trademark rights, for 'linndt' or any similar term. Additionally, the Respondent has not been licensed by the Complainant to register domain names featuring its LINDT mark, nor any confusingly similar variant thereof.

Paragraph 4(c) of the Policy stipulates some circumstances in which a respondent may demonstrate that it has a right or legitimate interest in a domain name. The Complainant submits that no such scenarios confer the Respondent with rights or legitimate interests in this matter.

The Complainant submits that the Respondent has not used, nor prepared to use, the disputed domain name in connection with a bona fide offering of goods or services, nor a legitimate non-commercial or fair use. The disputed domain name has been used to resolve to a site which prominently brandished the LINDT logo, and which purported to sell discounted LINDT-branded goods in connection with such. The resolving site adopted a similar look and feel (e.g., through its layout, colours and images) to that of the Complainant's official sites. The Respondent, by prominently and repeatedly brandishing the LINDT logo in conjunction with other visual indicia representative of the Complainant, has clearly attempted to impersonate/pass off as the Complainant.

Panels have categorically held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (WIPO Overview 3.0, section 2.13.1). Also see, for example, AB Electrolux v. Domain Admin, Whois Privacy Corp., WIPO Case No. D2022-0241: 'Furthermore, the disputed domain name resolves to an active website impersonating the Complainant's official website. In the Panel's view, this cannot amount to a bona fide offering of goods or services within the meaning of paragraphs 4(c)(i) of the Policy or to a legitimate noncommercial or fair use of the disputed domain name as provided by article 4(c)(iii) of the Policy.' The Respondent's conduct therefore neither constitutes a bona fide offering of goods or services nor some legitimate non-commercial or fair use.

The Complainant submits that the Respondent is not known, nor has ever been known, by its distinctive LINDT mark, 'linndt', nor anything similar. The Respondent is not connected to nor affiliated with the Complainant and has not received license or consent to use the LINDT mark in any way. Past UDRP decisions have also established that the mere ownership of a domain name does not confer rights or legitimate interests on a respondent (see, for example, Parchment LLC v. Jim Lovelle / Parchment Transcript LLC, Forum Case No. 2009654 (2022)).

The disputed domain name was registered and is being used in bad faith.

Under the Policy, bad faith is understood to occur where a respondent 'takes unfair advantage of or otherwise abuses a complainant's mark' (see WIPO Overview 3.0, section 3.1). The Complainant submits that the Respondent has both registered and is using the disputed domain name in bad faith, in accordance with paragraph 4(a)(iii).

The Complainant has accrued substantial goodwill and recognition in the LINDT brand, which was first registered as a trademark more than a century ago. The Complainant has some 500 retail stores and a comprehensive network of more than 100 distributors in over 120 countries. Previous UDRP panels have acknowledged the distinctiveness of, and renown and recognition attached to, the Complainant's LINDT mark (see, for example, Chocoladefabriken Lindt & Sprüngli AG v. Carolina Rodrigues, Fundacion Comercio Electronico, CAC-UDRP-102684 (2019): 'The Complainant's trademarks have existed for decades and are widely known worldwide.' and Chocoladefabriken Lindt & Sprüngli AG v. Sebastian Kochan, WIPO Case No. D2016-1849: 'The Complainant also brings to the Panel's attention that it has been established in previous UDRP decisions that LINDT is considered a well-known trademark.').

The Complainant highlights that the Complainant's LINDT mark is readily identifiable in publicly accessible trademark databases (e.g., WIPO's Global Brand Database). Additionally, when users search for 'linndt' on Google, the search engine assumes the user intended to type 'lindt' and presents results pertaining to such – i.e., the Complainant's offerings. It is therefore evident that, notwithstanding any other considerations, the simplest degree of due diligence would have otherwise made a registrant of the disputed domain name aware of the Complainant's rights in the globally renowned LINDT mark.

The Complainant further submits that the Respondent's misspelling of the string for the Complainant's website lindt.com constitutes further evidence of the Respondent's prior awareness and targeting of the Complainant through its registration of the disputed domain name. The Respondent's selection of 'linndt.com' reflects its intention to misleadingly capture and divert internet users attempting to, but who have inadvertently mistyped, the string of the Complainant's official website in a URL bar. The disputed domain name was therefore undoubtedly registered in bad faith. (Also see, for example, National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini, WIPO Case No. D2002-1011, noting that typosquatting is 'inherently parasitic and of itself evidence of bad faith'.)

The Complainant further asserts that the Respondent has also used the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy:

- "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location."

The Complainant submits that the Respondent has intentionally attempted to attract, for commercial gain, internet users by creating a likelihood of confusion with the Complainant's LINDT mark. The Complainant firstly submits that, given the nature of the disputed domain name and renown of its LINDT mark, there is a presumption of bad faith in this matter (see WIPO Overview 3.0, section 3.1.4: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.").

The Respondent has used the disputed domain name, which is almost identical to the Complainant's LINDT mark, to attract users familiar with the Complainant to a site which impersonates the latter. This use reflects the Respondent's intention to derive commercial gain from confused internet users who, believing they are interacting with a site controlled/authorised by the Complainant, attempt to purchase the site's purported offerings.

The Respondent has attempted to capitalise on the likelihood of internet-user confusion by, among other things:

- Repeatedly brandishing the Complainant's LINDT mark and logo;
- Reproducing similar design elements and other visual indicia (e.g., layout, colours and images) found on/associated with the Complainant's official sites; and
- Failing to prominently or sufficiently disclaim the disputed domain name´s site's lack of connection to the Complainant. Indeed, rather than attempting to mitigate the risk of confusion, the disputed domain name´s site featured footer language including "Oferta exclusiva neste site oficial, sujeita a variação. Evite comprar produtos mais baratos ou de outras lojas, para evitar golpes." (translating to "Exclusive offer on this official website, subject to variation. Avoid buying cheaper products or from other stores to avoid scams.") The Respondent also displayed the contact email address suportelindtoficial@gmail.com, which is further evidence of its attempt to misleadingly portray the disputed domain name´s site as controlled by the Complainant.
- Panels have consistently held that a respondent's use of a domain name to impersonate a complainant (or pass off as such) is evidence of bad faith registration and use under the Policy (see, for example, AB Electrolux v. Alexander Kleshchin, WIPO Case No. D2022-4515: "Meanwhile, the Complainant's evidence shows that the disputed domain name resolved to a website prominently displaying the Complainant's trademark and offering sales and services in relation to the Complainant's products, which indicates that the Respondent is seeking to cause confusion for the Respondent's commercial benefit or has an intent to profit in some fashion from the Complainant's trademark. The Panel therefore finds that the Respondent is using the disputed domain name in bad faith.'). Also see WIPO Overview 3.0, section 3.1.4, which, in reference to section 2.13.1, states: '…given that the use of a domain name for per se illegitimate activity… can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith."
- The Complainant lastly notes that, following a request to the Registrar to suspend the disputed domain name (given the Respondent's fraudulent conduct), the disputed domain name has been suspended and no longer resolves to an active site. The lack of current use does not, under the doctrine of passive holding (see WIPO Overview 3.0, section 3.3), prevent a finding of bad faith use under the Policy. As established above, the Complainant's LINDT mark is distinctive and enjoys worldwide recognition, its thousands of products sold across more than 120 countries. There is no evidence of the Respondent having made, or having attempted to make, any good faith, legitimate non-commercial or fair use of the disputed domain name. Indeed, given the nature of the disputed domain name (being a typosquatting variation of the Complainant's LINDT mark) and the manner in which it has previously been used (i.e., for an impersonation site) it is clearly implausible that the Respondent could make any good faith use of the disputed domain name.
- In view of the foregoing, the Complainant requests that the Panel makes a finding of bad faith registration and use under paragraph 4(a)(iii) of the Policy.
- The Complainant further contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

- Respondent:

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

The disputed domain name registered in 2024 is confusingly similar to the Complainant's LINDT trade mark (registered as set out above with use in trade recorded since 1879) adding only extra a single letter 'n' and the gTLD .com neither of which prevent said confusing similarity.

The Respondent is not commonly known by the disputed domain name or authorised by the Complainant.

The disputed domain name was used for a site that impersonated an official site of the Complainant using the Complainant's LINDT trade mark in its logo form as a masthead to purport to offer the Complainant's goods in a deceptive and confusing way. This is not a bona fide offering of goods or services or a non commercial legitimate fair use. The disputed domain name constituting a misspelling of the Complainant's mark was intended to be a typosquatting registration which is also indicative of a lack of rights or legitimate interests.

The Respondent did not answer this Complaint and has not rebutted the prima facie case evidenced by the Complainant herein.

The disputed domain name was registered and used in bad faith confusing Internet users for commercial gain and disrupting the Complainant's business. Typosquatting is bad faith per se.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **linndt.com**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2024-04-17

Publish the Decision