Decision for dispute CAC-UDRP-106327

Case number	CAC-UDRP-106327
Time of filing	2024-03-07 09:37:12
Domain names	lindtlindor.co, lindtlindor.info

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondents

Name	YIWEI REN
Name	wu qing ru

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademark registrations for LINDT, LINDOR, and LINDT LINDOR, including the following:-

- Germany Trademark no. 91037 for LINDT, registered on 27 September 1906;
- United States Trademark no. 87306 for LINDT, registered on 9 July 1912;
- International Trademark no. 217838 for LINDT, registered on 2 March 1959;
- European Union Trademark no. 000134007 for LINDT, registered on 9 September 1998;
- International Trademark no. 936939 for LINDT, registered on 27 July 2007;
- International Trademark no. 1128456 for LINDT, registered on 25 May 2012;
- International Trademark no. 145636 for LINDOR, registered on 28 February 1950;
- European Union Trademark no. 005640602 for LINDOR, registered on 18 March 2009;

The Complainant registered its official domain name <lindt.co.uk> on 17 October 1996. The disputed domain name <lindtlindor.co> was registered on 2 July 2023. The disputed domain name <lindtlindor.info> was registered on 23 June 2023.

Currently, the disputed domain names resolve to Dan.com webpages where they are offered for sale for USD 950 (<lindtlindor.info>), and USD 1450 (<lindtlindor.co>).

FACTUAL BACKGROUND

The Complainant is a chocolate maker based in Switzerland. Founded in 1845, it is a market leader in the premium chocolate industry. The Complainant has 11 production facilities in Europe and the United States. It produces over 2500 products, which are distributed in over 120 countries by its 28 subsidiaries through its comprehensive network of over 500 retail shops and 100 distributors. The Complainant employs over 14000 employees and its revenue in 2023 was around CHF 5.2 billion.

The Complainant states that its most popular offerings are under its LINDT LINDOR brand.

No additional information is known about the Respondents.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

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

PROCEDURAL FACTORS

Consolidation of Proceedings

The Complainant has requested that the two (2) disputed domain names should be consolidated under one unitary administrative proceeding, and has filed one Complaint against two Respondents accordingly.

Neither the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) expressly provides for or prohibits the consolidation of multiple respondents. In this regard, section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) states that:

“Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants’ identity(ies) including pseudonyms, (ii) the registrants’ contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).”

The Complainant has submitted that the two disputed domain names, despite the different registrant identities disclosed by the

respective registrars, are subject to common control, as evidenced by the following:-

- the disputed domain names are identical to each other, save for the gTLD;
- the disputed domain names were registered only 9 days apart;
- the disputed domain names are being sold on a DAN.com webpage by the same user, “pace.domains“; and
- the postal codes for the two respondents, 223000 and 223001, are adjacent to each other within jiangsu proviunce, China.

The Panel is of the view that the disputed domain names are identical to each other, save for the gTLD. The fact that the domain names are being sold by the same user on Dan.com is strong evidence that the disputed domain names are subject to common control, notwithstanding the different registrants. The Panel therefore finds that it is more likely than not that the two disputed domain names are under the control of the same individual or group of individuals, and will permit the consolidation of the proceedings under one unitary proceeding as it would be equitable and procedurally efficient to do so.

Language of the Proceedings

The language of the Registration Agreement of the domain name <lindtlindor.co> is English.

The language of the Registration Agreement of the domain name <lindtlindor.info> is Chinese.

The Complaint has been submitted in English.

The Complainant has requested that the language of the proceedings be English for the following reasons:-

- The disputed domain name, <lindtlindor.info>, resolves to a webpage in English;
- The disputed domain name is listed for sale by the seller “Pace Domains”, whose website is in English;
- The generic Top Level Domain (“gTLD”) “.info” is an abbreviation of the English word “information”;
- The Respondent, wu qing ru, has been the subject of multiple UDRP proceedings, and has been determined to be somewhat proficient in English;
- The Complainant’s representatives are not based in either Germany or China, and are unable to communicate in either German or Chinese. If the Complainant were required to translate the Complaint into Chinese, it would be unduly disadvantaged and be put to extra costs for the translation of the Complaint.

Taking into account the above and in an exercise of the Panel’s discretion, the Panel has determined that the language of the proceedings be English.

PRINCIPAL REASONS FOR THE DECISION

Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the LINDT, LINDOR, and LINDT LINDOR marks.

In this case, the disputed domain names contain the entirety of the Complainant’s LINDT, LINDOR, and/or LINDT LINDOR trademarks with no relevant additions or omissions.

In addition, the disputed domain names comprise the Complainant’s LINDT, LINDOR, and/or LINDT LINDOR trademarks and the generic Top-Level Domain (“gTLD”) “.com”. It is well established that the addition of a gTLD “.co” or “.info” does not avoid confusing similarity between the Complainant’s trademark and the disputed domain names (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are identical to a trademark in which the Complainant has rights.

Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondents lack rights or legitimate interests in respect of the disputed domain names and the Respondents have failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the LINDT, LINDOR, and LINDT LINDOR marks long before the date that the disputed domain names were registered and that it is not licensed or otherwise authorised the Respondents to use the Complainant’s trademark.

The Complainant also provided evidence that the Respondents are not commonly known by either of the disputed domain names. See WIPO Overview 3.0, section 2.3. The Complainant has not consented to the use of its LINDT, LINDOR, and/or LINDT LINDOR trademarks, or part thereof, in the disputed domain names.

Further, the Respondents did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

Registered and Used in Bad Faith

The Complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence which shows that the Respondents registered the disputed domain names long after the Complainant registered the LINDT, LINDOR, and LINDT LINDOR trademarks and has accrued substantial goodwill and recognition of its LINDT, LINDOR, and LINDT LINDOR marks. Given that the LINDT, LINDOR, and LINDT LINDOR marks are highly distinctive, it is therefore highly unlikely that the Respondents were unaware of the Complainant and its LINDT, LINDOR, and/or LINDT LINDOR trademarks at the time of registering the disputed domain names. Therefore, the registration of the disputed domain names must necessarily have been done in bad faith.

Further, in view of the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondents were aware of the Complainant and its LINDT, LINDOR, and/or LINDT LINDOR trademarks at the time of registering the disputed domain names and specifically targeted the Complainant for an unknown reason.

The Complainant provided evidence that the disputed domain names resolve to various Dan.com webpages where the disputed domain names are being offered for sale for a price that far exceeds the Respondent's likely out-of-pocket registration costs. Past panels have held that the sale of a domain name in this manner can serve as indication of bad faith.

The Respondents failed to submit a response and did not provide any explanation for registering the disputed domain names or evidence of good-faith use.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including (1) the registration of the disputed domain names long after the registration of the Complainant's trademarks, (2) the incorporation of the Complainant's trademarks with no additions or alterations, (3) the reputation of the Complainant in the LINDT, LINDOR, and LINDT LINDOR trademarks, and (4) the failure of the Respondents to submit a response, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindtlindor.co**: Transferred
2. **lindtlindor.info**: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2024-04-19

Publish the Decision