Decision for dispute CAC-UDRP-106462

Case number	CAC-UDRP-106462
Time of filing	2024-04-22 11:34:48
Domain names	lindit.site

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	RAFAEL ARAUJO DE ANDRADE BRUM

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 owns numerous trade mark registrations internationally for its LINDT mark including German trade mark registration 91037 registered on September 27, 1906 and Brazilian trade mark registration 826413609 registered on August 14, 2007.

The Complainant and its affiliated companies/subsidiaries hold numerous domain names which incorporate the LINDT mark, and these are used to advertise the Complainant's goods and services across a wide range of territories around the world, including <lindt.com>, <lindt.ch>, <lindt.co.uk>, <lindt.it>, <lindtusa.com>, <lindt.ca>, <lindt.com.br>, <lindt.jp>, <lindt.cn> and <lindt.com.au>.

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 it offers more than 2,500 products which are distributed by 28 subsidiaries through 500 retail shops and a comprehensive network of more than 100 distributors in over 120 countries. The Complainant has more than 14 thousand employees and had a revenue of CHF 5.2 billion in 2023.

The disputed domain name was registered on March 17, 2024 and formerly resolved to a website featuring the LINDT mark and logo and purported to offer for sale discounted LINDT branded goods.

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

The Complainant submitted that it satisfies the identity/confusing similarity requirement of the first element on the basis that the disputed domain name consists of a misspelt variation of the Complainant's LINDT mark (the addition of an 'i' before the 't'). The Panel agrees with the Complainant that from a side-by-side comparison, the Complainant's mark is clearly recognisable in the string. Previous panels have consistently held that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered confusingly similar for the purposes of the first UDRP element (see WIPO Overview 3.0, section 1.9). Accordingly, the Panel finds that the Complaint succeeds under the first element of the Policy.

The Complainant has submitted that to the best of its knowledge, the Respondent has not registered any trade marks, nor does the Respondent have unregistered trade mark rights, for 'lindit' or for any similar term. Additionally, the Respondent has not been licensed by the Complainant to register the disputed domain name featuring its LINDT mark, or any confusingly similar variant thereof. The Complainant has also submitted that the Respondent has not used, or prepared to use, the disputed domain name in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use. The Complainant has further asserted that the disputed domain name previously resolved to a site which prominently featured the LINDT logo and purported to sell discounted LINDT-branded goods from a website that adopted a similar look and feel through its layout, colours and images to that of the Complainant's official sites and that this amounted to an attempt to impersonate or pass itself off as the Complainant.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and that this case has not been rebutted by the Respondent. Accordingly, the Panel finds that the Complaint succeeds under the second limb of the Policy.

The Complainant asserts that it acquired its distinctive and now well-reputed LINDT trade mark registrations (as noted above) long before the registration of the disputed domain name on March 17, 2024. The Panel agrees with the Complainant that the disputed domain name appears to be a typosquatting of the LINDT mark by the inclusion of an additional "i" before the "t". The fact that the disputed domain name formerly resolved to a website featuring the LINDT mark and representations of the Complainant's chocolate products which it purported to offer for sale, suggests that the Respondent was most likely well aware of the Complainant's LINDT mark and business when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a

Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case and as submitted by the Complainant, it appears that the Respondent, as submitted in evidence by the Complainant, has previously used the disputed domain name to confuse and divert Internet users to a website which featured the Complainant's LINDT mark and which appeared to masquerade as if it was the Complainant's own website, or was authorised or endorsed by the Complainant. The website also displayed representations of the Complainant's products and appeared to offer them for sale under its trade marks, as if the site was authorised or endorsed by the Complainant, when this was not the case. Such use, even if the disputed domain name does not currently resolve to the website, amounts to the Respondent having used the disputed domain name in bad faith to confuse Internet users and to divert them to the Respondent's website for its own commercial purposes. The Respondent has not attempted to rebut these allegations or to explain its conduct. Under paragraph 4(b)(iv) of the Policy this is evidence of registration and use of the disputed domain name in bad faith by the Respondent.

It appears to the Panel that this is a blatant example of typosquatting in bad faith and of the Respondent attempting to masquerade as if its website is the Complainant's or is authorised by it when this is not the case which falls precisely into the class of conduct that the Policy seeks to proscribe . Accordingly, the Panel also finds that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindit.site**: Transferred

PANELLISTS

Name	**Mr Alistair Payne**

DATE OF PANEL DECISION 2024-05-31

Publish the Decision