Decision for dispute CAC-UDRP-106511

Case number	CAC-UDRP-106511
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Domain names	lindtt.com

Case administrator

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

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	felllppeee

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 numerous trademark registrations including the following:

- German trademark registration number 91037 for LINDT in Class 30, registered on September 27, 1906;

- United States trademark registration number 87306 for LINDT in Class 30, registered on July 9, 1912;

- International trademark registration number 217838 for LINDT in Class 30, registered on March 2, 1959.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Founded in 1845, the Complainant is a well-known chocolate maker based in Switzerland and sells products under the trademark is LINDT, among others. 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. The Complainant also owns a number of related domain names including

<lindt.com>, <lindt.ch>, and <lindt.co.uk>. The disputed domain name was registered on March 14, 2024.

The disputed domain name is confusingly similar to the Complainant's trademark as it is an obvious misspelling thereof, only adding the letter "t" to the word LINDT. The domain name also adds the ".com" TLD. Further, the disputed domain name resolves to a parking page with commercial pay-per-click links. The Respondent thus has no rights or legitimate interests in the disputed domain name, it is not authorised to use the Complainant's trademark, it is not commonly known by the name, and it is not making a bona fide or fair use of the disputed domain name. Further, typosquatting of the Complainant's well-known trademark for a domain name that resolves to a website with monetized links indicates that the disputed domain name was registered and is used in bad faith.

PARTIES CONTENTIONS

The Complainant contends as follows:

- The Complainant has rights in the LIDT trademark and the <lidtt.com> domain name is confusingly similar to the trademark;
- The Respondent has no rights or legitimate interests in the disputed domain name as it is not commonly known thereby, and the domain name resolves to a page with pay-per-click links that seek to leverage the reputation of the Complainant's well-known trademark; and
- The disputed domain name was registered and is used in bad faith where its resolving pay-per-click page seeks commercial gain based on confusion with the Complainant's trademark and there are MX records associated with the disputed domain name.

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

1. Trademark Rights and Identity or Confusing Similarity

Sufficient evidence of trademark rights in the term LINDT has been submitted by the Complainant in the form of screenshots from the websites of the German Patent and Trade Mark Office (DPMA), the United States Patent and Trademark Office (USPTO), the World Intellectual Property Organization (WIPO), and the websites of other trademark offices, each of which shows the details of its trademark registrations the respective jurisdiction. As such, the Panel finds that the Complainant possesses rights in its asserted trademark.

Next, UDRP panels have consistently held that where the asserted trademark is recognizable within a disputed domain name, a minor misspelling does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. The disputed domain name is a misspelling of the trademark LINDT adding the letter “t”. The domain name further adds the “.com” gTLDs. Thus, the Complainant asserts that the disputed domain name is confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain name originates from or is endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. ARCELORMITTAL v. Derreck Benoit, UDRP-105722 (CAC September 18, 2023) (“The Panel finds that the disputed domain name [arcelormittalz.com] is confusingly similar to the Complainant’s trademark ARCELORMITTAL since the mere addition of the letter "Z" does not eliminate any confusing similarity.”).

Furthermore, the extension “.com” typically adds no meaning or distinctiveness to a disputed domain name and is usually disregarded in the paragraph 4(a)(i) analysis. Novartis AG v. Wei Zhang, UDRP-103365 (CAC December 9, 2020) (“it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ‘.com’) is to be disregarded under the confusing similarity test.”).

In light of the above, the Panel concludes that the Complainant possesses rights to its claimed trademark and that the disputed domain name is confusingly similar thereto under Paragraph 4(a)(i) of the Policy.

2. Rights or Legitimate Interests

The Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii). Should it succeed in that effort, the burden then shifts to the Respondent to show that it does have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, UDRP-102378, (CAC March 8, 2019) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent has rights or legitimate interest in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under Paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”. Past decisions under the Policy have held that use of a domain name that is confusingly similar to a well-known trademark and that hosts a monetized pay-per-click page is not a bona fide offering of goods or services. See, e.g., Loro Piana S.p.A. v. Y. v. Oostendorp, UDRP-101335 (CAC March 26, 2018) (use of a disputed domain name that copies the complainant's trademark to resolve to a pay-per-click website "cannot be considered a bona fide offering of goods or services...."). Here, the Respondent is using the disputed domain name to resolve to a parking page that contains pay-per-click links that have no relation to the Complainant’s line of business. As the asserted LINDT trademark is quite well-known, as demonstrated by evidence provided by the Complainant (e.g., screenshots from the Complainant’s website describing the history of the company, social media pages, news articles, industry awards bestowed on the Complainant, and the results of a Google search for “lindtt”), the Panel concludes that the Respondent is using the disputed domain name to seek click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead.

The second example, under Paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. In considering this issue, relevant information can include the WHOIS record and any other assertions by a complainant regarding the nature of its relationship with a respondent. See LABORATOIRE NUXE v. Domains For Sale, UDRP-106079 (CAC January 25, 2024) (“Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.”). See also Z&V v. Mecara Untech (Mecara Untech), UDRP-106222 (CAC February 27, 2024) (no rights or legitimate interests found where “[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark.”). The WHOIS record for the disputed domain name, as verified by the concerned Registrar, identifies the registrant name and organization as “felipewell felipewell” and “felllppeee” respectively. The Complainant further asserts that “[t]he 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.”. The Respondent has not participated in this case and so it does not offer any information or evidence to argue against the Complainant’s assertions. Accordingly, the Panel finds no ground upon which to conclude that the Respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii).

As to the third example, under paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the LINDT trademark. As the disputed domain name resolves to a classic pay-per-click website, this does not rebut the assertion that its use is not fair as the Respondent's activity does not fit into any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above analysis, and with no Response or other submission in this case to rebut the Complainant's assertions, this Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interest in the disputed domain name under paragraph 4(a)(ii) of the Policy.

3. Bad Faith Registration and Use

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("The standard of proof under the Policy is often expressed as the 'balance of the probabilities' or 'preponderance of the evidence' standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

The Complainant first asserts that the Respondent was aware of and targeted the LINDT trademark at the time it registered the disputed domain name. Actual knowledge of a complainant's trademark may form the foundation upon which to build a case for bad faith under Policy paragraph 4(a)(iii). See, Intesa Sanpaolo S.p.A. v. Ciro Lota, UDRP-106302 (CAC April 4, 2024) ("Given the distinctiveness and reputation of the Complainant's prior marks, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such well-known marks and the intention to exploit such reputation by diverting traffic away from the Complainant's website."). As noted above, the LINDT trademark is quite well-known. Further, the Complaint asserts that "the Respondent's misspelling of the string for the Complainant's official website lindt.com constitutes further evidence of the Respondent's prior awareness and targeting of the Complainant through its registration of the Domain Name.". The Panel does find persuasive the Respondent's use of a typographical variation of the well-known trademark in the disputed domain name. Based on the reputation of the Complainant's trademark and the Respondent's typosquatting action, the Panel concludes that it is more likely than not that the disputed domain name was registered with actual knowledge of the Complainant's trademark rights.

Next, the Complaint asserts that the disputed domain name is being used for a pay-per-click website to divert users to other websites based upon confusion with its trademarks and it also notes the existence of Mail Exchange (MX) records associated with the domain name. Such activity has been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. AMUNDI ASSET MANAGEMENT v. Carolina Rodrigues (Fundacion Comercio Electronico), UDRP-106360 (CAC April 15, 2024) (bad faith found where it is shown "(a) that the disputed domain is confusingly similar to the Complainant's well-known trademark; (b) that the Respondent must have had actual knowledge of the Complainant's rights in its trademarks; (c) that the disputed domain name resolves to a registrar parking page with commercial links, thus attempting to attract Internet users to his website for commercial gain; and (d) that the disputed domain name was set up with MX records which suggests that it may be actively used for e-mail purposes."). See also, Focus Do It All Group v. Athanasios Sermbizis, D2000-0923 (WIPO October 12, 2000) (the Panel found that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial."). The Complainant notes that the disputed domain name is a typosquatted variation on its well-known trademark, that the pay-per-click website is seeking commercial gain based on confusion with the trademark, and that the existence of MX records indicates that the Respondent may be engaging in e-mail phishing or other fraudulent activities. Based on the foregoing arguments and a preponderance of the submitted evidence, the Panel finds that the disputed domain name is being used to seek commercial gain based on a likelihood of confusion with the Complainant's trademark under paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindtt.com**: Transferred

PANELLISTS

Name	**Steven Levy**

DATE OF PANEL DECISION 2024-06-06

Publish the Decision