Decision for dispute CAC-UDRP-106520

Case number	CAC-UDRP-106520
Time of filing	2024-05-14 10:14:04
Domain names	brasillindt.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	Gabriel Schmidt

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 registered owner of many trademark registrations worldwide for “LINDT”, e.g. European Union trademark registration no. 000134007 LINDT, registered on 07/09/1998 for goods in class 30.

FACTUAL BACKGROUND

It results from the Complainant’s undisputed allegations that it is a chocolate maker, founded in 1845 and based in Switzerland. The Complainant is active in the market of premium quality chocolate and 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. In addition, it has more than 14 thousand employees.

The Complainant use numerous domain names which encompass the LINDT mark to advertise the Complainant’s products around the world, i.e. <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.

The Complainant further contends its trademark LINDT be distinctive and well-known.

The disputed domain name <brasillindt.com> was registered on 07/03/2024. Furthermore, the undisputed evidence provided by the

Complainant proves that the disputed domain name resolved to a webshop prominently displaying without authorization the Complainant's trademark and logo and allegedly selling Complainant's 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

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademarks worldwide for the terms "LINDT", e.g. European Union trademark registration no. 000134007 LINDT, registered on 07/09/1998 for goods in class 30.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7).

Although the addition of other terms here, "brasil", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, WIPO Overview 3.0, section 1.8.

Finally, the Top-Level Domain ("TLD") ".com" of the disputed domain name may be disregarded under the first element confusing similarity test. WIPO Overview 3.0 at section 1.11.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the Complainant's trademark e.g. by registering the disputed domain name. Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered trademark and a geographic term (i.e. "brasil" corresponding to Brazil in English). The nature of this disputed domain name carries a risk of implied affiliation: in fact, certain geographic terms (e.g., <trademark-usa.com>, or <trademark.nyc>) are seen as tending to suggest sponsorship or endorsement by the trademark owner, see WIPO Overview 3.0, at section 2.5.1.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark LINDT is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant's trademark when registering the disputed domain name. This is underlined by the fact that the disputed domain name contains the Complainant's trademark preceded by a geographical term. 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, WIPO Overview 3.0 section 3.1.4. The Panel shares this view.

Furthermore, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a website prominently displaying without authorization the Complainant's trademark and logo and allegedly selling Complainant's LINDT-branded goods.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name, and that the Respondent used the disputed domain name in bad faith.

The Panel finds that the Complainant has therefore satisfied 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. **brasillindt.com**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2024-06-14

Publish the Decision