Decision for dispute CAC-UDRP-106521

Case number	CAC-UDRP-106521
Time of filing	2024-05-14 10:14:19
Domain names	lindtbr.shop

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	ARJONES NEGOCIOS LTDA

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 proprietor of several trademarks worldwide for „Lindt“, among them the European trademark registration 134007 in class 30 applied for on April 1, 1996 as well as the Brazilian trademark registration 826413609 in class 35 applied for April 16, 2004. Both marks are in effect.

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 disputed domain name was registered on March 26, 2024 and initially resolved to a page showing the products from the Complainant for sale under the company name Lindt, all that before the hosting provider suspended the site on the request of the Complainant.

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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

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

(ii) The Respondent has no rights or legitimate interests with respect to the domain name; and

(iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established the fact that it has valid trademark rights for „Lindt“ in several countries.

The disputed domain name is confusingly similar to the Lindt mark of the Complainant since the addition of the geographical abbreviation „br“ at the end of the second level domain of the disputed domain name does not prevent a finding of a sufficient confusing similarity.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark „Lindt“, in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the disputed domain name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the disputed domain name since there is no indication that the Respondent is commonly known by the name “Lindt” or „lindtbr“ nor that the Respondent is using the disputed domain name in connection with a bona fide offering of related goods or services.

The latter could be discussed since Respondent seems to have offered products from the Complainant. However, the majority opinion of panelists follows in cases where a legitimate interest of resellers of original goods to use a trademark in the domain name is in question, the test of Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No.D2001-0903, <okidataparts.com> after which such use might be legitimate if the use comprise the actual offering of goods, only the trademarked goods are sold on the site, and the site is accurately and prominently disclosing the registrant's relationship with the trademark holder.

Although this Panel follows even the argumentation that any reseller is not allowed to use the trademark, unless otherwise authorized, in a manner which goes beyond the scope of informing the customer about the core of its business activities (see also Ferrero S.p.A. v. Fistagi S.r.l., WIPO Case No. D2001-0262; Raymond Weil SA v. Watchesplanet (M) Sdn Bhd, WIPO Case No. D2001-0601; dissenting opinion in DaimlerChrysler A.G. v. Donald Drummonds, WIPO Case No. D2001-0160) and unless it is not clear for the customer that the retailer is not an authorized partner of the Trademark owner, the present case does not meet even the less strong criteria of the test after Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No.D2001-0903, <okidataparts.com>, since the website under the disputed domain name creates the impression of being authorized by the Complainant or even the Complainant himself.

The Panel therefore finds that the respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Due to the long existence of Complainant´s marks being well known (see CAC-UDRP-106511, lindtt.com, Chocoladefabriken Lindt & Sprüngli AG vs. felipewell for many others), the Respondent must have been well aware of the Complainant and its trademarks when registering the disputed domain name. The Complainant had not authorised the Respondent to make use of its mark. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular disputed domain name without the Complainant's authorization.

The circumstances of this case furthermore indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to a potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such potential website or location, or of a product or service on such website or location.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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. **lindtbr.shop**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2024-06-17

Publish the Decision