# Decision for dispute CAC-UDRP-106613

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| Case number | CAC-UDRP-106613 |
| Time of filing | 2024-06-17 13:05:59 |
| Domain names | lindor.shop |

## Case administrator

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| Name | Olga Slanařová (Case admin) |

## Complainant

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| Organization | Chocoladefabriken Lindt & Sprüngli AG |

## Complainant representative

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| Organization | SILKA AB |

## Respondent

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| Name | MEI WANG |

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:

- International trademark registration number 145636 for LINDOR in Class 30, registered on February 28, 1950.

- United States trademark registration number 1729638 for LINDOR in Class 30, registered on November 3, 1992;

- European Union trademark registration number 005640602 for LINDOR in Classes 6, 14, 16, 18,

21, 25, and 28, registered on March 19, 2009; and

- China trademark registration number 24259336 for LINDOR in Class 14, registered on May 14, 2018.

FACTUAL BACKGROUND

Founded in 1845, the Complainant is a well-known chocolate maker based in Switzerland and sells products under the trademark LINDOR, 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 disputed <lindor.shop> domain name was registered on December 15, 2023 and resolves to a page at a third-party reselling platform which advertises its sale for USD 1,450.

## PARTIES CONTENTIONS

Complainant's Contentions:

The disputed domain name is confusingly similar to the Complainant's trademark as it's second level is identical to the term LINDOR. The domain name also adds the ".shop" TLD which creates a high risk of implied affiliation with the Complainant's official online shops. 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, copying of the Complainant's well-known trademark for a domain name that resolves to a for sale website indicates that the disputed domain name was registered and is used in bad faith. Finally, the disputed domain name is intended to prevent the Complainant from reflecting its trademark in a corresponding domain name and the Respondent has engaged in a pattern of such conduct.

Respondent's Contentions:

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 LINDOR has been submitted by the Complainant in the form of screenshots from the websites of the World Intellectual Property Organization (WIPO), the United States Patent and Trademark Office (USPTO), the European Intellectual Property Office (EUIPO), the China National Intellectual Property Administration (CNIPA), 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 second level of a disputed domain name is made up entirely of an asserted

trademark, identity or confusing similarity may be found under paragraph 4(a)(i) of the Policy. OSCARO.COM v. Domain Name Privacy Inc, UDRP- 106524 (CAC July 8, 2024) (“The disputed domain name [oscaro.online] incorporates the Complainant's trademark "OSCARO" in its entirety. It is, therefore, easy for this Panel to hold that the disputed domain name is identical to the trademark in which the Complainant has rights.”). The disputed domain name consists of the LINDOR trademark combined with the “.shop” gTLD. Thus, the Complainant asserts that the disputed domain name is identical or at least 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.

Furthermore, a gTLD typically adds no meaning or distinctiveness to a disputed domain name and is usually disregarded in the paragraph 4(a)(i) analysis. However, in the present case, the extension “.shop” actually enhances confusion as it implies that the Complainant’s products may be available for sale at a website that resolves from the disputed domain name. CREDIT AGRICOLE S.A. v. SCI DU RONCIER, UDRP-103497 (CAC February 5, 2021) (confusion is heightened by the disputed domain name’s use of the “online” gTLD based on the Complainant’s provision on its digital services via a mobile application.).

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 redirects to a for sale page is not a bona fide offering of goods or services. AMUNDI ASSET MANAGEMENT v. Milen Radumilo (Domain Privacy), UDRP-106350 (CAC April 15, 2024) (no rights or legitimate interests found where the disputed domain name copied a well-known trademark and resolved to a page offering it for sale.). Here, the Respondent is using the disputed domain name to resolve to a page at a third-party domain name brokerage site that displays the statement “The domain name LINDOR.SHOP is for sale!”. The asserted LINDOR 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 and Baidu searches for “lindor”). Based on the resolution of the lindor.shop website, the Panel finds that the Respondent is attempting to sell the disputed domain name to the Complainant or one of its competitors and that this is not a bona fide offering of goods or services under Paragraph 4(c)(i).

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 as “MEI WANG”. 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 LINDOR 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 LINDOR trademark. As the disputed domain name resolves to a for sale page at a third-party 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

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 asserts that the Respondent was aware of and targeted the LINDOR 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 LINDOR trademark is quite well-known. Further, the Complaint asserts that "[t]he Respondent's selection of the Complainant's LINDOR mark with the '.shop' extension for the Domain Name constitutes, noting the high risk of implied affiliation referred to above, further evidence that the Respondent was aware of and intentionally targeted the Complainant when registering the Domain Name.". The Panel finds this persuasive as the Respondent uses an identical copy of the well-known trademark in the second level of the disputed domain name and adds only the ".shop" gTLD which relates to the Complainant's online sale of its products. Based on the reputation of the Complainant's trademark and the Respondent's actions, 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 offered for sale at a price that exceeds the Respondent's out-of-pocket registration costs. Such activity has been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. LABORATOIRES EXPANSCIENCE v. Biplob Hossain, UDRP-106545 (CAC June 7, 2024) (bad faith found, under paragraph 4(b)(i) of the Policy, where the disputed domain name is confusingly similar to the Complainant's trademark and has been offered for general sale shortly after its registration). The Complainant notes that the second level of the disputed domain name is identical to its well-known trademark and that, in light of the reputation of the LINDOR trademark, the Respondent's intent "has clearly been to sell it to the Complainant for valuable consideration in excess of the Domain Name's registration cost.". The Complainant has submitted into evidence a screenshot showing the disputed domain name offered for sale at a price of USD $1450. Also submitted are copies of a cease-and-desist letter, sent by the Complainant's Representative, and the Respondent's reply, a short email stating only "$800". Based on the foregoing arguments and a preponderance of the submitted evidence, the Panel finds that the disputed domain name was acquired primarily for the purpose of selling it to the Complainant or one of its competitors under paragraph 4(b)(i) of the Policy.

Finally, the Complainant asserts that the Respondent has sought to prevent it, as the owner of the LINDOR trademark, from reflecting the mark in a corresponding domain name and that the Respondent has engaged in a pattern of such conduct under paragraph 4(b)(ii) of the Policy. It cites three prior decisions in which domain names owned by the Respondent were found to violate the Policy. Syngenta Participations AG v. Mei Wang, D2024-0731 (WIPO April 8, 2024); Sopra Steria Group v MEI WANG, D2024-0606 (WIPO April 3, 2024); and Landis+Gyr AG v. MEI WANG, D2023-1770 (WIPO June 13, 2023). As the disputed domain name targets the Complainant's well-known trademark and the Respondent has demonstrated a pattern of bad faith conduct, this constitutes further support for the Panel's finding of bad faith registration and use under paragraph 4(b)(i) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindor.shop**: Transferred

## PANELLISTS

| Name | **Steven Levy** |
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DATE OF PANEL DECISION 2024-07-11

Publish the Decision