Decision for dispute CAC-UDRP-106611

Case number	CAC-UDRP-106611
Time of filing	2024-06-18 14:47:48
Domain names	lindtpascoa.com, lindtpascoa.online, lindtpascoa.store

Case administrator

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

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	Fox Intermediacoes 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 names.

IDENTIFICATION OF RIGHTS

In order to prove ownership of the LINDT trademark, the Complainant submitted two internal documents. However, these extracts are not official documents; only trademark certificates or extracts from the official trademark databases are the correct tools to prove the ownership of a trademark. Thus, only these documents should be used, within UDRP proceedings, in order to prove ownership of a trademark.

That being said, the Panel verified such list on the relevant trademark databases and confirms that the Complainant is the owner of the following trademark:

LINDT, International reg. no. 1773636 claiming a priority of June 23rd 2023 designating Brazil and the European Union.

FACTUAL BACKGROUND

I - The Complainant

The Complainant is an international manufacturer of chocolate and owns, among the others, the trademark LINDT.

II - The disputed domain names

The disputed domain names were all registered on March 30, 2024 by FOX INTERMEDIACOES LTDA. The disputed domain names all point to inactive websites.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 names are 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 names (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 names have been registered and are 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. The disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark LINDT.

The Panel finds that the trademark “LINDT” is fully recognizable in the disputed domain names since the addition of the generic word "pascoa" (Easter in Portuguese) increases the likelihood of confusion with the prior trademark LINDT as the Portguese speaking portion of the relevant public could easily associate this term with the Complainant's business conducted under the trademark LINDT.

According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met.

Furthermore, the addition of domain name extension is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademark, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain names.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the disputed domain name. Once such a prima facie case is made, the respondent carries the burden of

demonstrating its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Panel finds that the Complainant's submitted evidence and allegations are sufficient to establish a prima facie case of Respondent's lack of rights and legitimate interests in the disputed domain names.

According to the information provided by the Complainant and not contested by the Respondent, FOX INTERMEDIACOES LTDA is not commonly known by the disputed domain names nor it is authorized to use the Complainant's trademarks LINDT.

Finally, the disputed domain names point to inactive websites. The Panel agrees that such use does not amount to a "bona fide offering of goods and services" nor to a "legitimate non commercial use" for the purposes of the Policy as confirmed by previous panels. As a matter of fact LINDT is a fanciful word and a well known trademark; these circumstances make it very improbable that the disputed domain names could be used in a way that would not interfere with the Complainant's prior rights.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain names for the purposes of the Policy.

3. The disputed domain names were registered and are used in bad faith.

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain names:

(i) the disputed domain names were registered well after the Complainant acquired rights on the trademark LINDT;

(ii) the Complainant's trademark is well known. The reputation of the trademark LINDT makes it very improbable that the Respondent was not aware of the Complainant's exclusive rights on LINDT at the time of the registration of the disputed domain names;

(iii) the disputed domain names combine the LINDT trademark with a generic word that could be connected to the Complainant's business (PASCOA - EASTER - CHOCOLATE). This is an additional index that proves that the Respondent was aware of the LINDT trademarks at the time of the registration of the disputed domain names.

Currently, the disputed domain names are not used. Previous panels have confirmed that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Generally, panels consider as material in order to determine bad faith the following factors:

(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (the "Telstra case test").

On the basis of the above mentioned factors the Panel concludes that the disputed domain names are used in bad faith since:

i. LINDT is a fanciful word and consequently the degree of distinctiveness of LINDT shall be considered high;

ii. the Respondent did not provide any response nor evidence in support of the contemplated good faith;

iii. LINDT is a well known trademark and consequently the Panel does not find any possible use in good faith to which the domain names may be put.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain names for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindtpascoa.com**: Transferred
2. **lindtpascoa.online**: Transferred
3. **lindtpascoa.store**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2024-07-19

Publish the Decision