Decision for dispute CAC-UDRP-106723

Case number	CAC-UDRP-106723
Time of filing	2024-07-22 09:09:40
Domain names	quizzlindt.com

Case administrator

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

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	gabriel araujo

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, Chocoladefabriken Lindt & Sprüngli AG, is owner of several trademarks registered worldwide, consisting of the distinctive term "LINDT", including:

Trademark	Origin	Registration Number	Registration Date	Class(es) Covered
LINDT	Germany	91037	27/09/1906	30
LINDT	United States	87306	09/07/1912	30
LINDT	Canada	UCA26258	17/10/1946	30
LINDT	International	217838	02/03/1959	30

LINDT	Switzerland	2P-349150	29/10/1986	30, 32
LINDT	International	622189	12/07/1994	30
LINDT	Australia	704669	14/03/1996	30
LINDT	European Union	000134007	07/09/1998	30
LINDT	International	936939	27/07/2007	6, 14, 16, 18, 21, 25, 28, 41
LINDT	Brazil	826413609	14/08/2007	35

The Complainant is also owner of numerous domain names, including <lindt.com>, <lindt.com.br> <lindt.ch>, <lindt.co.uk>, <lindt.se>, <lindt.it>, <lindtusa.com>, <lindt.ca>, <lindt.com.br>, <lindt.jp>, <lindt.cn> and <lindt.com.au>.

The above-mentioned rights (company name, trademarks, and domain names) are hereinafter referred to as the "LINDT Trademark".

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, 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 Respondent is gabriel araujo, an individual residing in Brazil.

The disputed domain name was registered on 17 March 2024 and resolves to a parking page.

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND THE CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has trademark rights in the LINDT Trademark.

In UDRP disputes the test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically a side-by-side comparison of the alpha-numeric domain name and the textual components of the relevant mark to assess whether the mark is recognizable within the domain name. 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 the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. The addition of letters or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the complainant's trademark does not prevent a finding of confusing similarity under the first element. The Top-Level Domain (TLD) is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the complainant's trademark as it is a technical requirement of registration.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, because it incorporates the entirety or at least the distinctive part of such mark, namely the distinctive term "LINDT", preceded by the typosquatted version of the generic and descriptive term "QUIZ", namely "QUIZZ", and the TLD ".COM". This additional (typosquatted) term neither affects the attractive power of the Complainant's trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. Therefore, the Internet users might erroneously believe that the disputed domain name and any related web services (website, e-mail, etc.,) are operated, sponsored or endorsed by the Complainant.

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names. If the Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

But by virtue of paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on her evaluation of all evidence presented, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name:

1. before any notice to the respondent of the dispute, the respondent's 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; or

2. the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if he/she has acquired no trademark or service mark rights; or

3. the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that he has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends to have no relationship whatsoever with the Respondent. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register and use the disputed domain name.

The Respondent, identified by the Registrar upon CAC's verification request, is gabriel araujo, residing in Brazil. There is no evidence available that the Respondent, as an individual, business, or other organization, has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name incorporates the Complainant's well-known trademark, plus the typosquatted version of the generic and descriptive term "QUIZ" ("QUIZZ"), and, thus is confusingly similar to the LINDT Trademark.

UDRP panels have found that domain names identical or confusingly similar to a complainant's trademark carry a high risk of implied affiliation. A domain name consisting of a trademark plus an additional term at the second- or top-level is seen as tending to suggest sponsorship or endorsement by the trademark owner. Thus, UDRP panels have largely held that such composition cannot constitute fair use.

Moreover, since the dispute domain name is inactive, there is no evidence that, before any notice to Respondent of the dispute, the Respondent used, or demonstrably prepared to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. THE REGISTRATION AND THE USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Complainant has sufficiently demonstrated to own rights in the LINDT Trademark since 1906. The Complainant's trademark was registered well before the date of registration of the disputed domain name (17 March 2024), is widely well-known internationally, and is valid also in the territory where the Respondent resides (Brazil).

The Respondent has used a privacy or proxy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact the Panel's assessment of bad faith.

The disputed domain name is to be considered confusingly similar to the Complainant's trademark, since it incorporates the entirety or at least the distinctive part of the Complainant's trademark, namely the term "LINDT". The addition of the typosquatted version of the generic and descriptive term "QUIZ" ("QUIZZ"), and the TLD ".COM" (technical requirement of the registration) are not sufficient elements to escape the finding of confusing similarity between the disputed domain name and the Complainant's trademark.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Given the distinctiveness and reputation of the Complainant's prior mark, acquired during its nearly 180-year history and confirmed also by several UDRP decisions, 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 mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the disputed domain name (which is quite unlikely), he omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, he verified it and deliberately proceeded with the infringing registration and use.

The Complainant has submitted the results of Google searches carried out regarding the terms "LINDT" and "QUIZZ LINDT", all of them related to the Complainant. Should the Respondent have performed a similar search on the Internet before registering the disputed domain name, he would have easily learnt about the Complainant's activities and trademark.

Under paragraph 2 of the Policy, it is the Respondent's responsibility to determine whether the domain name registration infringes or violates third party's rights. By registering the disputed domain name confusingly similar with the Complainant's mark, the Respondent has violated, inter alia, the cited provision of the Policy.

The disputed domain name does not resolve to any active website. UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see in particular Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003).

The following factors were considered by the Panel when applying the passive holding doctrine in the present case:

(i) the degree of distinctiveness and/or reputation of the Complainant's LINDT Trademark;

(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);
(iv) the implausibility of any good faith use to which the disputed domain name may be put.

Taken into account all circumstances of this case, the Panel finds that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being an infringement of the Complainant's trademark under trademark law, a passing off, or an infringement of consumer protection legislation.

The Complainant has, therefore, discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

Consequently, the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **quizzlindt.com**: Transferred

PANELLISTS

Name	**Ivett Paulovics**

DATE OF PANEL DECISION 2024-08-21

Publish the Decision