Decision for dispute CAC-UDRP-106852

Case number	CAC-UDRP-106852
Time of filing	2024-09-10 14:40:42
Domain names	lindt-home-of-chocolate.shop

Case administrator

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

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	Dirk Zagers

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 holds many trademark registrations for LINDT, covering numerous jurisdictions around the world and also two Swiss registrations for LINDT HOME OF CHOCOLATE. The Complainant's active trademark registrations include:

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	International	217838	02/03/1959	30
LINDT	Switzerland	2P-349150	29/10/1986	30, 32

LINDT	International	622189	12/07/1994	30
LINDT	European Union	000134007	07/09/1998	30
LINDT	International	936939	27/07/2007	6, 14, 16, 18, 21, 25, 28, 41
LINDT HOME OF CHOCOLATE	Switzerland	711339	28/12/2017	16, 25, 28, 29, 30, 35, 41, 43
LINDT HOME OF CHOCOLATE (DEVICE)	Switzerland	817549	17/07/2024	16, 25, 28, 29, 30, 35, 41, 43

FACTUAL BACKGROUND

The Complainant, founded in 1845, is a well-known chocolate maker based in Switzerland. The disputed domain name has a recent registration as of August 4, 2024, redirected to the ticketing page at the Complainant's official museum website at <lindt-home-of-chocolate.com> and currently redirects to another webpage providing ticketing information related to another museum, namely, Kilmainham Gaol (Ireland).

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). The Complainant's registered trademarks LINDT and LINDT HOME OF CHOCOLATE are recognizable within the disputed domain name <lindt-home-of-chocolate.shop>. The registration and the use of confusingly similar disputed domain(s) is a direct infringement of the legitimate rights held by the Complainant in the trademarks. See Para 1.7 of WIPO overview: "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. Lastly, the addition of the new gTLD ".shop" in <lindt-home-of-chocolate.shop> does not differentiate the disputed domain name from the trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraphs 1.7 and 1.11).

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).

The Respondent is not affiliated with/authorized by the Complainant in any way to make use of the Complainant's trademarks. At the same time, the Complainant's trademarks and the Museum are well known, which is evident from the evidence presented with this Complaint includes its history, financials, social media following, search results and so on. See Chocoladefabriken Lindt & Sprüngli AG v. felllppeee, CAC Case No. CAC-UDRP-106511: "The asserted LINDT 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 search for 'lindtt')".

The disputed domain name registered by the Respondent is intended to take advantage of the Complainant's substantial reputation and goodwill to confuse the public, divert business and tarnish the Complainant's reputation. The Respondent cannot be said to have legitimately chosen to use the disputed domain name unless it was seeking to create an impression of an association with the Complainant.

The Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The domain name in dispute on its registration on August 4, 2024, redirected to the ticketing page at the Complainant's official museum website at <lindt-home-of-chocolate.com> and currently redirects to another webpage providing ticketing information related to another museum, namely, Kilmainham Gaol (Ireland). In addition, the visitors to the disputed domain name as of date are first presented with a phishing warning message by the Google Chrome browser, stating "Google Safe Browsing, which recently found phishing on the site you're trying to visit." That is, there is no showing before any notice to the Registrant of the dispute, the Registrant's use of the Domain Name in connection with a bona-fide offering of goods or services. See Ministerium für Inneres, Bau und Digitalisierung, Mecklenburg-Vorpommern v. David Czinczenheim Case No. D2023-0446:

The Respondent "is not making a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the disputed domain name is used by the Respondent to direct Internet users to a blocked fraudulent website with a phishing warning". According to the WIPO Overview 3.0, section 2.13.1: "2.13.1 Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent […]."

Additionally, the Respondent is not making any legitimate or fair use of the disputed domain name, as further noted in paragraph 4(c)(iii) of the Policy. Instead, the Respondent has used the disputed domain name for phishing purposes and currently displays information to another European museum, with an intention to impersonate for commercial gain to misleadingly divert consumers and tarnish the trademark at issue. Specifically, visitors are prompted to choose dates for their Irish museum visit and are eventually directed to a payment webpage at: https://lindt-home-of-chocolate.shop/payments.php. This is particularly concerning due to the significant popularity of the Complainant and the Swiss Museum.

Considering that the disputed domain name resolves to a warning page, one might easily assume the disputed domain name was registered to defraud people by way of phishing. The said usage is certainly not in terms of clause 4(c)(i) or (iii) as neither the demonstrable preparation to use is a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the domain name is being made.

See: Skyscanner Limited v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Semen Arnov, WIPO Case No. D2021-2146:

"The existing evidence suggests that the Respondent might be using the disputed domain name in connection with phishing activities. Previous panels categorically held that such use never confer rights or legitimate interests on a respondent. See section 2.13.1 of the WIPO Overview 3.0. Taking into account the fame, reputation, and long period of substantive use of the Complainant's SKYSCANNER trademark online and in the corresponding Complainant's domain names and websites, and evidence suggesting that the disputed domain name is involved in illegal activity, the Panel finds that the Respondent is not involved in a bona fide offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities does not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) 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).

The registration of a domain name that is confusingly similar to another's mark, despite actual or even constructive knowledge of the mark holder's rights, constitutes bad faith registration and use, pursuant to Policy 4(a)(iii). See Chocoladefabriken Lindt & Sprüngli AG v. Louth Ecom, CAC-UDRP-106391: "...owing to the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain name." Specifically, the Respondent's use of the disputed domain name in furtherance of a phishing scheme to impersonate the Complainant and collect payment, reveals an actual knowledge of the Complainant.

Given the immense popularity and goodwill by the Complainant's trademark globally by virtue of its open, continuous and extensive use and its impeccable market reputation, it is clear that the Complainant's trademark is well-known and the Respondent knowingly chose to register and use the disputed domain name <lindt-home-of-chocolate.shop> to divert customers and drawing damaging conclusions as to the Complainant's operations through the disputed domain name, thus can adversely affect the Complainant's goodwill and reputation and its right to use the disputed domain name.

The Complainant asserts that it is inconceivable that the registration of the disputed domain name <lindt-home-of-chocolate.shop>, which incorporates trademark in its entirety was made without actual knowledge of the existence of the Complainant and its popular museum, given the historical screenshot for the disputed domain name, evidencing the redirection to the Complainant's official website's ticketing page.

See Intesa Sanpaolo S.p.A. v. Ciro Lota, CAC-UDRP-106302: "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."

The Complainant submits that the Complainant did not authorise the Respondent to make use of the disputed domain name in any form, rather a website at the disputed domain name is hosted to create consumer confusion and lure prospective customers seeking the Complainant's Museum).

See Chocoladefabriken Lindt & Sprüngli AG v. felipewell: felipewell, CAC Case No. CAC-UDRP-106392: "The disputed domain name was used for a site that impersonated an official site of the Complainant using the Complainant's LINDT trademark in its logo form as a masthead to purport to offer the Complainant's goods in a deceptive and confusing way. This is not a bona fide offering of goods or services or a non-commercial legitimate fair use... The disputed domain name was registered and used in bad faith confusing Internet users for commercial gain and disrupting the Complainant's business."

Indeed, it is evidence of bad faith registration and use in terms of Clause 4 (b)(iv) of UDRP: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Complainant owns various similar domain names, all incorporating its trademark LINDT including <lindt.com>, <lindt-home-of-chocolate.com>, <lindt-home-of-chocolate.ch>, <lindtshop.com>, etc. Hence, any individual coming across the disputed domain name or an associated e-mail ID ending with "@lindt-home-of-chocolate.shop" may assume it to be the Complainant's website/e-mail and instantly associate the same with the Complainant. The same is evident from the phishing warning displayed at the disputed domain name and the archived screenshot that redirected the domain name visitors to the ticketing page on the Complainant's official website. The Respondent likely used the disputed domain name in a phishing scheme and created an impersonating webpage at the disputed domain name to make it appear as though it is associated with the Complainant. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. See: Virgin Enterprises Limited v. David Barrow, WIPO Case No. D2020-3491: As to the use of the disputed domain name, the Panel notes that it has not been pointed to an active website, but to a page displaying a security message, warning that the content of the website at the disputed domain name is not safe and phishing activity has been detected. The Panel notes that, in view of the composition of the disputed domain name, it is indeed possible that the Respondent registered the disputed domain name for use in connection with email addresses or a website aimed at requesting payments to third parties by creating the impression of an affiliation or an association with the Complainant.

As stated in Section 3.4 of the WIPO Overview 3.0, "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. […] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers".

It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of opportunistic bad faith as understood in the Policy.

See Accenture Global Services Limited v. Contact Privacy Inc. Customer 1248275906/Vamshi Krishna Agulla (WIPO Case No. D2020-2776) it was held: "In the case at hand, all these elements are present and the selection of the disputed Domain Name appears clearly to be connected to Complainant's trademark; such use by someone with no affiliation with the Complainant strongly suggests opportunistic bad faith, see Singapore Airlines Ltd. v. European Travel Network, (WIPO Case No. D2000-0641); and Wikimedia Foundation Inc. v. Kevo Ouz a/k/a Online Marketing Realty (WIPO Case No. D2009-0798), where the panel highlighted that the Complainant's mark predated the Respondent's registration of the domain name, which is also true in the current case. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed Domain Name. It is not possible to conceive of any plausible actual or contemplated active use of the disputed Domain Name by Respondent that would not be illegitimate. See Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-0003)".

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

Given the immense popularity and goodwill by the Complainant's trademark globally by virtue of its open, continuous and extensive use and its impeccable market reputation, it is clear that the Complainant's trademark is well-known and the Respondent knowingly chose to register and use the disputed domain name <lindt-home-of-chocolate.shop> to divert customers and drawing damaging conclusions as to the Complainant's operations through the disputed domain name, thus can adversely affect the Complainant's goodwill and reputation and its right to use the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindt-home-of-chocolate.shop**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2024-10-10

Publish the Decision