Decision for dispute CAC-UDRP-106857

Case number	CAC-UDRP-106857
Time of filing	2024-09-13 09:38:36
Domain names	lindtsharepoint.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	Fundacion Comercio Electronico

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 registered owner of many trademarks LINDT, such as international trademark no. 217838, registered on March 2, 1959 for chocolate products in class 30. This mark has duly been renewed and is in force.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that,

(i) the Complainant is a well-known major chocolate maker based in Switzerland founded in 1845. It currently employs more than 14,000 people, has established more than 500 own retail shops worldwide and generated a revenue of CHF 5.2 billion in 2023;

(ii) the date of registration of the disputed domain name by the current registrant was June 5, 202;

(ii) the disputed domain name resolves to parking page displaying Pay-Per-Click links (“PPC”) connected to the Complainant's competitors such as Ferrero and Kosher Chocolate gifts and

(iv) the Complainant attempted to serve a Cease-and-Desist notice upon the Respondent, through the contact form made available on the Domain Registrar website in July 2024. However, no response was received.

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

1.
The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark.

The Complainant's registered trademark LINDT is included identically in the disputed domain name. The Panel considers that, despite the addition of the term "sharepoint" in a second position within the disputed domain name, the disputed domain name is confusingly similar to the Complainant's mark. In fact, the Complainant's mark, placed at the beginning of the domain name, is still recognisable in the disputed domain name and the addition of that element "sharepoint" does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, WIPO Overview 3.0, section 1.8.

2.
In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related to the Complainant’s business. In addition, the Respondent is not commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy. Furthermore, it results from the evidence provided by the Complainant that the disputed domain name resolves to a parking page with PPC-links connected to the Complainant's competitors such as Ferrero and Kosher Chocolate gifts. Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host such a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users, as it is the case for the parking page at issue. Finally, a parking page with commercial PPC links does per se not constitute legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

3.
Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith. It is indeed satisfied that the Respondent has registered the disputed domain name for the mere purpose of creating a risk of confusion and diverting the

Internet users to its website (see paragraph 4(b)(iv) of the Policy).

The Complainant's trademarks have existed for decades and are widely known worldwide. In addition, the Panel notes that the disputed domain name leads to a parking page with PPC-links connected to the Complainant's competitors such as Ferrero and Kosher Chocolate gifts. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name contained the Complainant's LINDT trademark when it registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed LINDT mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are:

(i) the high degree of distinctiveness and the worldwide reputation of the Complainant's mark;

(ii) the Respondent's failure to submit a response or to provide any evidence of actual or contemplated good faith use;

(iii) the Respondent not replying to the cease-and-desist notice sent through the Registrar's contact form;

(iv) the Respondent concealing its identity behind a privacy shield; and

(v) MX records are set up which creates the risk of a possible use for fraudulent (phishing) emails.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lindtsharepoint.com**: Transferred

PANELLISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2024-10-27

Publish the Decision