Decision for dispute CAC-UDRP-106982

Case number	CAC-UDRP-106982
Time of filing	2024-10-21 12:57:50
Domain names	llndt.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	llndt.com

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 the following trademark registrations, including the following:

- German trademark registration No. 91037 for LINDT in Class 30, registered on September 27, 1906;

- United States trademark registration number 87306 for LINDT in Class 30, registered on July 9, 1912;

- International trademark registration number 217838 for LINDT in Class 30, registered on March 2, 1959.

FACTUAL BACKGROUND

The Complainant, founded in 1845, is a renowned Swiss chocolate maker with 11 production sites across Europe and the U.S. It distributes over 2,500 products through 28 subsidiaries, 500 retail shops, and 100+ distributors in 120+ countries. With 14,000+ employees, it generated CHF 5.2 billion in revenue in 2023.

The Complainant and its affiliates own numerous domain names featuring the LINDT mark, including <lindt.com>, <lindt.ch>, <lindt.co.uk>, <lindt.se>, <lindt.it>, <lindtusa.com>, <lindt.ca>, <lindt.com.br>, <lindt.jp>, <lindt.cn>, and <lindt.com.au>, which are used for global marketing.

The disputed domain name was registered on August 5, 2024 and currently resolves to inactive web-page.

PARTIES CONTENTIONS

The Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) The disputed domain name is confusingly similar to the Complainant's LINDT trademark, as it fully incorporates this trademark, which is clearly recognizable within the disputed domain name. The disputed domain name's second level comprises a misspelt form of the LINDT mark – the 'i' has been replaced with the similar-appearing letter 'l'. Additionally, the presence of the generic Top-Level Domain (gTLD) ".com" in the disputed domain name is a standard registration requirement and may be disregarded.

(2) The Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent does not have trademark rights for, nor is it commonly known by, 'llndt' or any similar term. The Respondent is not connected to nor affiliated with the Complainant and has not received license or consent to use the LINDT mark in any way. There is no evidence that an entity with the name 'llndt.com' exists, and certainly not within Ontario, Canada (where the Respondent purports to be located). The Respondent's use of the disputed domain name (which is confusingly similar to the LINDT mark) as its alleged organisation name reflects an attempt to impersonate/falsely legitimise the registration of the disputed domain name as being in connection with the Complainant. The disputed domain name previously resolved to an 'under construction' parking page and is now suspended, not resolving to any active site. The Respondent has not used, nor prepared to use, the disputed domain name in connection with a bona fide offering of goods or services, nor a legitimate non-commercial or fair use.

(3) The disputed domain name was registered and is being used in bad faith. The Complainant's LINDT brand is well-established, distinctive, widely known, and registered as a trademark in many countries around the world. The Complainant's oldest trademark registration predates the disputed domain name by more than a century, and its offerings are available in over 120 countries. The Complainant has a significant social media presence under the LINDT brand, with millions of followers, and holds a large portfolio of domain names which incorporate the LINDT mark at the second level. The Respondent has not responded to the Complainant's representatives' attempts to contact it; there is no evidence of the Respondent having made any good faith, legitimate non-commercial or fair use of the disputed domain name, nor of it being commonly known by such. There is no plausible explanation for the Respondent's selection and registration of the disputed domain name other than to capitalise on the trademark value of the Complainant's LINDT brand. The Respondent's passive holding of the disputed domain name constitutes bad faith use under the Policy.

The Complainant requires the disputed domain name to be transferred.

The Respondent

The Respondent did not reply to the Complainant's contentions.

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

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

1) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark in which the Complainant has rights;

2) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3) that the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

1. **Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has shown rights in respect of its LINDT mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The Panel finds the Complainant's mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. WIPO Overview 3.0, section 1.7.

The disputed domain name incorporates the Complainant's mark in its entirety, with the only difference being the changed letter "l", which substitutes the letter "i" present in the LINDT mark, which is a demonstration of "typosquatting", which constitutes a common misspelling, satisfying the test for confusing similarity. See WIPO Overview 3.0, section 1.9.

The Panel further notes that the gTLD ".com" is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant's Mark to the disputed domain name. WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

2. **Rights or Legitimate Interests**

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 name.

It is well established that, as it is put in WIPO Overview 3.0, section 2.1, while the overall burden of proof in the proceedings is on the complainant, proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a prima facie case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name, notably by demonstrating rights in the LINDT trademark, which precede the Respondent's registration of the disputed domain name for years, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant's LINDT trademark or any domain names incorporating the LINDT trademark.

According to the case file, there is nothing to suggest any bona fide use that might confer rights or legitimate interests in the disputed domain name on the Respondent. Nor is there any evidence that the Respondent has made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, and taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel concludes that the Respondent has no trademark rights related to the disputed domain name.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, and that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, taking into account that the Respondent is not sponsored by or legitimately affiliated with the

Complainant in any way, the Panel found that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With the evidence on file, the Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. **Registered or Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant's LINDT mark was used and registered by the Complainant many years before the time of the disputed domain name registration. The Respondent's selection of a typosquatting domain name string (differing by one character from the Complainant's official website and involving the similar-appearing letter 'l') reflects its prior awareness and targeting of the Complainant through its registration of the disputed domain name. In the circumstances, the Panel finds it more likely than not that the Respondent had the Complainant's LINDT mark in mind when registering the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. WIPO Overview 3.0, section 3.2.1.

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. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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. WIPO Overview 3.0, section 3.3. All of these conditions seem to have been met in the current proceedings.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's mark, the composition of the disputed domain name (a misspelling version of the Complainant's mark), and the employment of the privacy service, and finds that in the circumstances of this case the passive holding of the disputed domain name do not prevent a finding of bad faith under the Policy.

Further, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use of the disputed domain name.

All the above circumstances confirm the Respondent's bad faith in the disputed domain name under the Policy. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **llndt.com**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2024-11-28

Publish the Decision