Decision for dispute CAC-UDRP-107071

Case number	CAC-UDRP-107071
Time of filing	2024-11-19 16:19:01
Domain names	lindtchocolatebliss.shop

Case administrator

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

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	BergeronRichard

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the trademarks bearing “LINDT”, inter alia, the following:

- Trademark registration for “LINDT” numbered 91037 in Germany with the registration date of 09.1906
- Trademark registration for “LINDT” numbered 87306 in the United States of America with the registration date of 07.1912
- Trademark registration for “LINDT” numbered UCA26258 in Canada with the registration date of 10.1946
- International trademark registration for “LINDT” numbered 217838 with the registration date of 03.1959
- Trademark registration for “LINDT” numbered 2P-349150 in Switzerland with the registration date of 10.1986
- International trademark registration for “LINDT” numbered 622189 with the registration date of 07.1994
- Trademark registration for “LINDT” numbered 704669 in Australia with the registration date of 03.1996
- Trademark registration for “LINDT” numbered 000134007 in the European Union with the registration date of 09.1998
- International trademark registration for “LINDT” numbered 936939 with the registration date of 07.2007

The Complainant and its affiliated companies/subsidiaries also own several domain names containing “LINDT“, such as <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>, among others.

FACTUAL BACKGROUND

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FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, founded in 1845, is a well-known chocolate maker based in Switzerland, consistently featured in lists collating the largest and most popular chocolate brands/manufacturers in the world. The Complainant has a strong social media presence with, for example, seven million followers on Facebook (facebook.com/Lindt), more than 160 thousand followers on Instagram (www.instagram.com/lindt/), and over 130 thousand followers on LinkedIn (https://ch.linkedin.com/company/lindt-&-sprungli).

In the past, the Complainant filed complaints against domain names involving their “LINDT“ brand and has been successful (e.g. Chocoladefabriken Lindt & Sprüngli AG v. Dirk Zagers, CAC-UDRP-106852 (2024; Chocoladefabriken Lindt & Sprüngli AG v. gabriel araujo, CAC-UDRP-106723 (2024); Chocoladefabriken Lindt & Sprüngli AG v. Gilberto Lopes Teixeira Da Silva (Fox Intermediacoes Ltda), CAC-UDRP-106611 (2024); Chocoladefabriken Lindt & Sprüngli AG v. ARJONES NEGOCIOS LTDA, CAC-UDRP-106521 (2024); Chocoladefabriken Lindt & Sprüngli AG v. Gabriel Schmidt, CAC-UDRP-106520 (2024)).

The Complainant owns “LINDT” numbered 91037 in Germany, “LINDT” numbered 87306 in the United States of America, “LINDT” numbered UCA26258 in Canada, the International trademark “LINDT” numbered 217838 with the registration date of 12.03.1959, “LINDT” numbered 2P-349150 in Switzerland, International trademark “LINDT” numbered 622189, “LINDT” numbered 704669 in Australia, “LINDT” numbered 000134007 in the European Union, and the International trademark “LINDT” numbered 936939.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name <lindtchocolatebliss.shop> is confusingly similar to its “LINDT“ trademarks covering many jurisdictions, as the Complainant’s trademark “LINDT“ trademark is reproduced identically within the disputed domain name.

The Complainant submits that the addition of “Chocolate” and “Bliss” term in the dispute domain name would not prevent a finding of confusingly similarity (e.g. Canva Pty Ltd v. Cliff Smith / Maurice G Summers, WIPO Case No. D2023-1121; Chocoladefabriken Lindt & Sprüngli AG v. qin shu, CAC-UDRP-106890 (2024)).

Moreover, the Complainant requests the “.shop“ extension in the disputed domain name to be disregarded under the first element confusing similarity test (see WIPO Overview 3.0, section 1.11.1 ; Chocoladefabriken Lindt & Sprüngli AG v. qin shu, CAC-UDRP-106890 (2024)).

NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests in the domain name <lindtchocolatebliss.shop>, since the Respondent does not have trademark rights for, nor is it commonly known by, ‘lindtchocolatebliss’ or any similar term. Moreover, 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.

The Complainant submits that the Respondent has not used, nor prepared to use, the domain name in connection with a bona fide offering of goods or services, nor a legitimate non-commercial or fair use. In this regard, the domain name resolves to a site which prominently brandishes the LINDT trademark and purports to sell discounted LINDT-branded goods in connection with such. Thus, the Respondent has LINDT mark and images of LINDT-branded goods to create the false impression that the domain name is operated or otherwise authorised by the Complainant. The consistent UDRP decisions held that the use of a domain name to engage in activities including impersonation/passing off, or other types of fraud can never confer a respondent with rights or legitimate interests under the Policy (see WIPO Overview 3.0, section 2.13.1).

The Complainant states that the composition of the domain name creates a high risk of implied affiliation with the LINDT brand since the Respondent has combined the Complainant’s LINDT mark with the words "chocolate" (a direct reference to the Complainant’s industry and offerings) and "bliss" (a feeling which can be associated with the consumption of confectionery goods). These additions, along with the gTLD ".shop" (which has commercial connotations), foster the misleading impression that the corresponding website is operated or endorsed by the Complainant. Such composition cannot constitute fair use.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant’s “LINDT“ brand has acquired substantial goodwill and recognition which was registered as a trademark more than a century ago, and has been subject to comprehensive use in over 120 countries. It has been established before with previous UDRP decisions that “LINDT“ is considered as a well-known trademark (Chocoladefabriken Lindt & Sprüngli AG v. Sebastian Kochan, WIPO Case No. D2016-1849; Chocoladefabriken Lindt & Sprüngli AG v. gabriel araujo, CAC-UDRP-106723 (2024)). Thus, the Complainant asserts that the disputed domain name <lindtchocolatebliss.shop> was registered in bad faith, since it is clear that the Respondent was aware of and targeted, through its registration of the domain name, the Complainant’s globally established LINDT brand.

Moreover, the Complainant explains that the Respondent has also used the domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant submits that the Respondent has used the disputed domain name, which is confusingly similar to the Complainant's LINDT mark, to attract users familiar with the Complainant to a site which passes off as operated or authorised by such, and to derive commercial gain from confused internet users who, believing they are interacting with a site legitimately associated with the Complainant, attempt to purchase the purported (and apparently discounted) offerings.

The Complainant states that the Respondent has attempted to create confusion with the Complainant with a view to deriving commercial gain by prominently brandishing the LINDT mark, featuring images of the Complainant's LINDT-branded goods, and ailing to prominently or sufficiently disclaim the Domain Name's lack of connection to the Complainant.

The Complainant explains that the Respondent, in the past, has been a respondent in at least two recent previous domain name disputes resulting in the transfer of the domain names to the complainants (e.g. Williams-Sonoma, Inc. v. BergeronRichard, WIPO Case No. D2024-3348 and Colgate-Palmolive Company, The Murphy-Phoenix Company, Hill's Pet Nutrition, Inc. v. DODSONCLAYTON, KathleenCarter, BergeronRichard, du yan, WIPO Case No. D2024-3853). Thus, the Respondent's engagement in similar acts of cybersquatting is wider evidence of its bad faith conduct, reflecting a propensity to target multiple distinct brands.

Based on these grounds, the Complainant concludes the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

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

- the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of the registered “LINDT“ trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s “LINDT” trademarks as it incorporates the Complainant’s “LINDT” trademark in its entirety (PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696).

The term “CHOCOLATE” pertains to the Complainant’s core business and prompts consumers to associate the disputed domain name with the Complainant. Thus, simply adding the non-distinctive word “CHOCOLATE” to the well-known “LINDT” trademark does not eliminate the similarity and may even enhance it, given its connection to the Complainant’s main area of activity. The disputed domain covers identically the Complainant’s trademark “LINDT,” leading the Panel to believe that Internet users are likely to mistakenly think that the domain name is officially affiliated with the Complainant. Additionally, the addition of the term “BLISS” does not sufficiently mitigate the risk of confusion.

Lastly, the addition of the new gTLD “.shop” in <lindtchocolatebliss.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).

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are met.

2. NO 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 domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making 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

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an 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 it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant argues that the Respondent has no rights or legitimate interests in the <lindtchocolatebliss.shop>. The Panel is satisfied that the Complainant’s “LINDT“ trademark is well-known and the Complainant has been using its trademark for many years, while the Respondent registered the disputed domain name recently without authorization.

In the absence of a response, the Panel accepts the Complainant’s allegations as true that the Respondent has no authorization to use the Complainant’s trademark in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. BAD FAITH

The Panel concludes that the Complainant's “LINDT“ trademark has distinctive character and is well-known in its sector.

The Panel is of the opinion that due to the earlier rights of the Complainant in well-known “LINDT“ trademarks in different jurisdictions, the Respondent, was or should have been aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226).

Bearing in mind the well-known status of the Complainant’s “LINDT“ trademark, as well as its wide use in different jurisdictions over the years, the Respondent’s deliberate registration and use of the disputed domain name < lindtchocolatebliss.shop> exploit the well-known LINDT trademark to mislead consumers, harm the Complainant’s reputation, and undermine its goodwill and rightful domain usage. Thus, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(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. **lindtchocolatebliss.shop**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2024-12-30

Publish the Decision