FORUM
ARBITRATION · MEDIATION · INTERNATIONAL

URS DEFAULT DETERMINATION

Lidl Stiftung & Co KG v. et al.
Claim Number: FA2010001915616

DOMAIN NAME
<outletlidl.shop>

PARTIES

Complainant: Lidl Stiftung & Co KG of Neckarsulm, Germany.
Complainant Representative:
Complainant Representative: HK2 Rechtsanwälte of Berlin, Germany.

Respondent: Albin Beganovi\u0107 of Zenica Zenicko-Dobojski, Bosnia and Herzegovina.
Respondent Representative: **UNKNOWN**

REGISTRIES and REGISTRARS

Registries: GMO Registry, Inc.
Registrars: GoDaddy.com, LLC

EXAMINER

The undersigned certifies that she has acted independently and impartially and to the best of her knowledge has no known conflict in serving as Examiner in this proceeding.

Luz Helena Villamil Jimenez, as Examiner.

PROCEDURAL HISTORY

Complainant submitted: October 2, 2020
Commencement: October 5, 2020
Default Date: October 20, 2020

Having reviewed the communications records, the Examiner finds that the FORUM has discharged its responsibility under URS Procedure Paragraphs 3 and 4 and Rule 4 of the Rules for the Uniform Rapid Suspension System (the "Rules") .

RELIEF SOUGHT

Complainant requests that the domain name be suspended for the life of the registration.

STANDARD OF REVIEW

Clear and convincing evidence.

FINDINGS and DISCUSSION

The present case refers to the domain name <outletlidl.shop>.

In accordance with the provisions of URS, Complainant, Lidl Stiftung & Co KG contends that:

1. The registered domain name is identical or confusingly similar to a word or mark for which the Complainant holds a valid national or regional registration and that is in current use;

2. Registrant has no legitimate right or interest to the disputed domain name, and

3. The domain name was registered and is being used in bad faith since by using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

Complainant asserts that it belongs to the LIDL-Group, a famous global discount supermarket chain based in Germany. The LIDL-Group operates more than 10.000 stores with over 285.000 employees. Currently its stores can be found in 29 countries. It owns numerous national and international trademarks "LIDL", such as WO TM 748064 for classes 01,02,03,04,05,07,08,09,11,13,14,16, 8,21,23,24, 25,26,27,29,30,31,32,33,34,35,36,39,41,42, and Community Trademark 006460562 for classes 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,1 8,20,21,23, 24,25,26,27,28,29,30,31,32,33,34,35,36,39,40,41,42. Furthermore, it argues that Complainant registered the Domain with TMCH 23 September 2019 and Respondent registered the Domain Name on 20200210.

Complainant states as well that it has not authorized Respondent to use its trademark "LIDL" or register the a domain name containing it, and is not affiliated with Respondent. It adds that such behavior does not support any finding of rights or legitimate interests, but rather bad faith. Moreover, Respondent is not commonl known by the domain name.

Complainant also contends that the domain name is not used for bona fide offering goods or services, since it resolves into a website resembling a web shop for clothing, and the layout of the website deliberately creates a likelihood of confusion with Complainants' marks by depicting a logo extremely similar to Complainant's trademarked "LIDL" logos, and in addition the design used by Respondent entails the word mark "LIDL".

Complainant adds that Respondent obviously had knowledge of Complainant´s trademarks when registering the domain name: Complainant´s trademarks predate the registration of the domain name by many years, and therefore the domain name was registered in bad faith. Moreover, the disputed domain is being used in bad faith, to create confusion among Internet users as to the possibility that Complainant is the source or sponsor of, or is affiliated with or endorses, Respondent's website.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires Complainant to make a *prima facie* case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name should be suspended:

[URS 1.2.6.1] The registered domain name(s) is/are identical or confusingly similar to a word mark:
(i) for which the Complainant holds a valid national or regional registration and that is in current use; or
(ii) that has been validated through court proceedings; or
(iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

Determined: Finding for Complainant

The process contains documentation demonstrating that the Complainant is the owner of International Registration No. 748064, and Community Trademark 006460562 for the trademark LIDL in several international classes. The process contains as well evidence that demonstrates that Complainant's trademark LIDL is in use in connection with discount supermarkets in several countries.

Consequently, the Examiner considers that the requirement of demonstrating trademark rights and the usage thereof has been satisfied.

[URS 1.2.6.2] Registrant has no legitimate right or interest to the domain name.

Determined: Finding for Complainant

The disputed domain name <outletlidl.shop> contains the registered trademark LIDL. Said domain clearly is not identical to the registered trademark basis of the present action, but the word “OUTLET” turns out to be a generic term which does not add any distinctiveness to the domain in as much as it is commonly used around the world to refer to stores that offer low cost products. Thus, in the present case the combination of the word “outlet” with the trademark “LIDL” together with the first level domain “shop” make a direct reference to a store or place offering inexpensive products.

The Examiner thus considers that the foregoing facts indicate that the Registrant does not have a legitimate right or interest to the domain name, but instead an opportunistic interest of taking advantage of a widely known trademark. In this respect, the Examiner concurs with Complainant in that any commercial use of a trademark or domain name comprising the trademark LIDL would necessarily infringe Complainant’s trademarks, and this could not be avoided by adding other words (and much less if they are generic) to the registered trademark.

[URS 1.2.6.3] The domain name was registered and is being used in bad faith:

a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant’s web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Registrant’s web site or location or of a product or service on that web site or location.

Determined: Finding for Complainant

Complainant submitted evidence demonstrating that the disputed domain name is used in connection with a website for the sale of clothes. The website shows

in the upper left side a reproduction of the LIDL trademark as registered at WIPO according to the registration copy submitted with the Complaint, and this fact demonstrates, beyond any doubt, that the domain was registered with the intention of leading visitors to mistakenly believe that said internet site belongs as well to the owner of the registered trademark LIDL. This activity demonstrates that the domain <outletlidl.shop> was registered to disrupt the business of the Complainant, and to attract for commercial gain Internet users to Registrant's web site by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location. Therefore the disputed domain name is being used in bad faith.

DETERMINATION

After reviewing the Complainant's submissions, the Examiner determines that the Complainant has demonstrated all three elements of the URS by a standard of clear and convincing evidence; the Examiner hereby Orders the following domain names be SUSPENDED for the duration of the registration.
<outletlidl.shop>

Luz Helena Villamil Jimenez, Examiner
Dated: October 23, 2020

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