Panel Decision for dispute CAC-ADREU-007149

Case number	CAC-ADREU-007149
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Domain names	aldidirect.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	ALDI STORES LIMITED

Respondent

Name	Greg Saunderson

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

Not applicable

FACTUAL BACKGROUND

The Respondent registered the domain ALDIDIRECT.eu on the 6 August 2015 with GODADDY of Scottsdale USA. The Complainant submitted a complaint on 15 February 2016.

A. COMPLAINANT

The Complainant submitted that

1. Factual and Legal Grounds

Aldi GmbH & Co. KG (“Aldi GmbH”), a company registered under the laws of Germany, and Aldi Stores Limited, a company registered under the laws of England (together, the “Complainant”), have rights in
aldidirect.eu (the “Domain”) on the basis of prior rights to the ALDI trade mark (and similar signs and marks) and in view of the presence of the ALDI trade mark in the Domain.

In this respect, the Complainant recalled (and provided evidence) that the following rights are asserted:

i. Aldi GmbH own a number of well-known registered trade marks for marks comprising the ALDI name. Details of a number of registrations (both UK and Community, e.g. word CTM “ALDI” registered on 2 April 2002) were submitted with the complaint.
(the “Trade Marks”).

ii. Aldi Stores Limited was incorporated on 25 November 1988 and had traded as Aldi Limited even before that. It is a well known supermarket under common control of the Complainant and Aldi GmbH, and as a licensee under the aforementioned ALDI Trade Marks it trades under the famous and recognised ALDI name. A Mint UK summary report for Aldi Stores Limited was submitted with the complaint (the “Mint Report”) showing, among other things, incorporation details and financial results. Reference was also made to Aldi

Stores Limited's main website (www.aldi.co.uk) screenshots of which were submitted with this complaint.

iii. The Complainant and their connected companies are recognized as international leaders in grocery retailing. They have more than 5,000 stores across the world and are also active in Australia, Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Switzerland, and the United States.

iv. Further, according to the Complainant ALDI is currently the most recognised brand across all sectors in the United Kingdom (in that regard the Complainant mentiones the YouGov BrandIndex Annual Report 2015).

In summary, the Complainant submitted that, as illustrated above, ALDI is a name which is recognised internationally and protected by the trade marks of the Complainant. In addition, the Complainant also benefits from rights in passing of based on the substantial reputation and goodwill which the Complainant has in the ALDI name.

Having asserted its rights the Complainant went on to outline four (4) other specific rules which it alleged that the registration of the domain in dispute contravenes:

2. The Domain is identical or confusingly similar to name and Trade Marks of the Complainant

The Domain includes the Complainant's famous name and trade mark ALDI. On this basis, the Complainant submits that the mere appearance of the Respondent's name on the publically accessible records relating to the Domain amounts to a misrepresentation which is likely to deceive the public into believing that the Domain is operated by the Complainant.

Significantly ,the Complainant further submitted, the Domain incorporates the "ALDI" sign (which is identical to the Complainant's name and Trade Marks) alongside the word "DIRECT" which further enhances confusion as it suggests an Aldi online shopping website. From this, it is inferred that the Domain is a direct presence of the Complainant's business, which is not the case.

Further, the Complainant submitted, "in view of the Complainant's name and trade mark ALDI in the Domain (which alone takes advantage of the Complainant's rights), it is evident that internet users will be confused into believing that the Domain is registered to, or at least operated or authorised by the Complainant. Additionally, an inference is drawn that any website hosted at the Domain will be a website that is operated by or with the consent of the Complainant. In consequence, most individuals navigating to the Domain will be expecting to reach a website operated by, or at the least associated with, the Complainant.

It is therefore apparent that use of the name ALDI, which is identical to the Complainant's Trade Marks, takes unfair advantage of the Complainant's rights by misleading users to believe that the Domain is connected with the Complainant, and that the overall construction of the Domain only serves to enhance confusion between the Domain and the Complainant.

For the avoidance of doubt, the Respondent has no rights in the Trade Marks or association with the Complainant whatsoever."

3. The domain name has been registered or is being used in bad faith.

(per paragraph B11(d)(1)(iii) of the Rules)

Additionally or in the alternative, the Complainant submitted that “the Domain has been intentionally used to attract internet users, for commercial gain, to the Respondent’s website by creating a likelihood of confusion with a name on which a right is recognized or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website of the Respondent.

The Domain makes use of the Complainant’s registered trade mark ALDI, in direct contravention of the Complainant’s trade mark rights. On the basis of these prior rights to the ALDI trade mark (and similar signs and marks) and in view of the presence of the ALDI trade mark in the Domain, it is inevitable that internet users will confused into believing that the Domain has an association with the Complainant. The registration of the Domain therefore took unfair advantage of the Complainant’s rights. On this basis alone, the Complainant considers the registration of the Domain to be in bad faith.

Significantly, the Domain incorporates the ALDI sign alongside the word “DIRECT” which further infers a connection with the Complainant and creates confusion as to the source of the Domain. This inferred association, which was intentionally created by the Respondent, is utilised to pick up web traffic from those users attempting to view a domain which is associated with the Complainant. Instead, users are directed to various unrelated third party domains by way of holding page hosted at the Domain featuring paid sponsored links.” A screenshot of the content hosted at the Domain was enclosed with the complaint.

It is therefore apparent, the Complainant has contended, that the Complainant’s trade mark ALDI was intentionally included in the Domain to direct web traffic to the same with a view to generating income for the Respondent by use of paid sponsored links. “As such, it is evident that the Domain is being used to exploit the Trade Marks and substantial reputation of the Complainant for the purpose of commercial gain to the Respondent.“

4. Additionally or in the alternative, the registration and use of the Domain disrupts the professional activities of the Complainant.

The Complainant further contended that the above mentioned links did not divert users to the legitimate domain of the Complainant (aldi.co.uk) as expected; instead these links directed the user to third party websites, such as cv-library.co.uk and couponxplorer.com. The Domain therefore disrupts the business of the Complainant as those users attempting to reach to Complainant’s legitimate domain will be diverted away to unrelated domains, which alone will have a negative effect on the business of the Complainant. Moreover, as a result of this diversion, users will become disappointed and frustrated and unfairly associate the same with the Complainant, which will invariably affect both the business and reputation of the Complainant.

The Complainant submitted that even if such links were disregarded (on the chance that a consumer perceives something amiss before acting) the distinctive character and reputation of the Trade Marks are harmed by association in any event. In all the circumstances there is a detrimental impact on the reputation and professional activities of the Complainant.

Additionally or alternatively, contends the Complainant, the circumstances suggest that the Domain was registered in order to prevent the Complainant, as holder of such a name in respect of which a right is recognized or established by national and Community law, from

reflecting this name in a corresponding domain name and the Respondent has engaged in a pattern of such conduct

As previously set out in the complaint, the Complainant's trade mark ALDI is incorporated into the Domain, despite the Respondent having no genuine connection or association with the Complainant.

Further in this regard, the Complainant submitted that the Respondent has also registered several similar domain names which also incorporate the ALDI name and trade mark. In addition to the Domain, these include aldi-direct.co.uk, aldidirect.co.uk, aldi-direct.com and aldidirect.com.

It is therefore evident, says the Complainant, that the Respondent has registered numerous domain names which take advantage of the Complainant's Rights, in bad faith, with a view to profit.

Consequently, as the Respondent is engaged in a pattern of registering domain names which include the ALDI name, despite having no rights in the Trade Marks or legitimate association with the same, it is inferred that the Respondent registered these domain names, including the Domain, primarily for the purposes of selling, renting or otherwise transferring the domain names to the Complainant for valuable consideration.

It therefore follows that registration of the Domain prevents the Complainant from acquiring the same for its own legitimate business purposes in the future, except by purchasing the same from the Respondent.

As at the date of the complaint, all content which was previously hosted at the Domain has been removed and the Domain currently hosts the standard holding page of the registrar (GoDaddy). This is likely, says the Complainant, to have been as a result of a letter which was sent to the Respondent by the Complainant's representatives notifying them of the Complainant's rights to the Domain, although to date there has been had no response from the Respondent.

The Complainant contends that this lack of response is further evidence that the Domain is abusive. Also, from the changes made, it can be inferred that the Respondent accepted that such content previously hosted at the Domain was abusive.

The Respondent's bad faith is now further demonstrated by its inaction, that is, its passive holding of the Domain to the exclusion of the Complainant.

5. The domain name has been registered by the Respondent without rights or legitimate interest in the name

(per paragraph B11(d)(1)(ii) of the Rules)

All the evidence suggests that, additionally or in the alternative, the Complainant's rights in the trade marks predate the Respondent's registration of the Domain, which was registered on 6 August 2015.

The Complainants have not licensed or otherwise authorised the Respondent to use the ALDI trade mark.

The Respondent therefore has no right or legitimate interest in the Domain, nor any rights in the Trade Marks, or association with the Complainant whatsoever.

Furthermore, the Respondent has not conducted any prior business under the name ALDI in connection with the bona fide offering of goods or services. The Domain has been used solely in connection with paid advertising links for the purposes of commercial gain.

B. RESPONDENT

The Respondent is in default despite repeated reminders from the ADR.eu Case Administrator. No response was received and thus none could be taken into consideration by the Panellist.

DISCUSSION AND FINDINGS

The Complainant's allegations appear to be true, are supported by a considerable body of evidence and have remained undisputed. Had the Respondent any reasonable arguments showing that the registered domain name at the centre of this dispute is one closely in connection with a business or trade mark in which the Respondent has a legitimate interest then it is assumed that he would have demonstrated this in a timely response. None was received and therefore this Panellist has seen no evidence to suggest that the registration was based on any legitimate business interest or pre-existing trademark over which the Respondent had any form of legal rights. All the evidence suggests that the Complainant's rights in the trade marks predate the Respondent's registration of the Domain, which was registered on 6 August 2015. Furthermore, it should be noted that the Domain incorporates the Complainant's trade mark "ALDI" merely adding common English word "DIRECT" which further enhances confusion as it suggests an Aldi online shopping website. Therefore, the Panel finds the Domain confusingly similar to the Complainant's trade mark "ALDI".

The Complainants have not licensed or otherwise authorised the Respondent to use the ALDI trade mark. The registration and use of the Domain disrupts the professional activities of the Complainant. The Respondent would therefore appear to have no right or legitimate interest in the Domain, nor any rights in the Trade Marks, or association with the Complainant whatsoever. Therefore, the Panel finds the Respondent has no rights or legitimate interest in the Domain.

Finally, the Panel is of the opinion that the Domain has been registered and used in bad faith for the Domain has been intentionally used to attract internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with a name on which a right is recognized or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website of the Respondent. This inferred association, is utilised to pick up web traffic from those users attempting to view a domain which is associated with the Complainant. Instead, users are directed to various unrelated third party domains by way of holding page hosted at the Domain featuring paid sponsored links.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the Complaint is Accepted and

the domain name ALDIDIRECT.EU be transferred to the Complainant

PANELISTS

Name	**Professor Joseph André Cannataci, LLD FBCS CITP**

DATE OF PANEL DECISION 2016-06-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: aldidirect.eu

II. Country of the Complainant: UK, country of the Respondent: UK

III. Date of registration of the domain name: 06 August 2015

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. [word/combined/figurative] trademark registered as indicated in Annex 1 of Complaint
2. business identifier: ALDI
3. company name: ALDI
4. other: the Complainant submitted that, ALDI is a name which is recognised internationally and In addition, the Complainant also benefits from rights in passing of based on the substantial reputation and goodwill which the Complainant has in the ALDI name. The registration and use of the Domain disrupts the professional activities of the Complainant.

V. Response submitted: No

VI. Domain name is both identical and confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The domain name has been registered by the Respondent without rights or legitimate interest in the name. ALDI is a name which is recognised internationally and protected by the Trade Marks of the Complainant which predate the registration of the disputed domain name by several years. In addition, the Complainant also benefits from rights in passing of based on the substantial reputation and goodwill which the Complainant has in the ALDI name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: a) it is inevitable that internet users will be confused into believing that the Domain has an association with the Complainant. The registration of the Domain therefore took unfair advantage of the Complainant's rights. b) The Domain has been intentionally used to attract internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with a name on which a right is recognized or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website of the Respondent. c) the Domain incorporates the ALDI sign alongside the word "DIRECT" which further infers a connection with the Complainant and creates confusion as to the source of the Domain. This inferred association, is utilised to pick up web traffic from those users attempting to view a domain which is associated with the Complainant. Instead, users are directed to various unrelated third party domains by way of holding page hosted at the Domain featuring paid sponsored links.

IX. Other substantial facts the Panel considers relevant: All content which was previously hosted at the Domain has been removed and the Domain currently hosts the standard holding page of the registrar (GoDaddy). This is likely, says the Complainant, to have been as a result of a letter which was sent to the Respondent by the Complainant's representatives notifying them of the Complainant's rights to the Domain, although to date there has been had no response from the Respondent. The Complainant contends that this lack of response is further evidence that the Domain is abusive. Also, from the changes made, it can be inferred that the Respondent accepted that such content previously hosted at the Domain was abusive. Furthermore, the Respondent would appear to be engaged in a pattern of registering domain names which include the ALDI name, despite having no rights in the Trade Marks or legitimate association with the same, it is inferred that the Respondent registered these domain names, including the Domain, primarily for the purposes of selling, renting or otherwise transferring the domain names to the Complainant for valuable consideration.

X. Dispute Result: Transfer of the disputed domain name
XI. Procedural factors the Panel considers relevant: No Response was filed depriving the Panel of any evidence demonstrating any legitimate interests on the part of the Respondent.

XII. [If transfer to Complainant] Is Complainant eligible? Yes as evinced by Company House records