



香港國際仲裁中心

Hong Kong International Arbitration Centre

**Hong Kong International Arbitration Center  
Administrative Panel Decision  
Case No. DHK-0800038**

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**Complainant :** ALDI GmbH & Co. KG

**Respondent :** QINGHUA ZHOU

**Domain Name :** [www.aldi.hk](http://www.aldi.hk)

**Registrar :** Hong Kong Domain Name Registration Company Ltd.

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**1、 Procedural History**

On 23 October 2008, the Complainant submitted a Complaint in the English language to the Hong Kong International Arbitration Center (HKIAC) and elected this case to be dealt with by a one-person panel, in accordance with the Hong Kong Domain Name Registration Company Limited (HKDNR) Domain Name Dispute Resolution Policy (the Policy), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure (the Rules) and the HKIAC Supplemental Rules (the HKIAC Supplemental Rules).

On 24 October 2008, the HKIAC notified the Registrar of the Disputed Domain of the proceedings by email. The Registrar acknowledged this notification by email of 28 October 2008 confirming its registration of the Disputed Domain and including its WHOIS information.

The Complaint was served upon the Respondent by the HKIAC by email on 5 November 2008. In accordance with the Rules, the Respondent shall submit a Response within fifteen business days from 5 November 2008. The Respondent submitted a Response on 23 November 2008.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the HKIAC notified the parties on 9 December 2008 that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel should render the Decision within 15 business days, i.e., on or before 23 December 2008.

The language of the proceeding is English, as being the language of the Domain Name Registration Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

## **2、 Factual Background**

### **For the Complainant**

The Complainant in this case is ALDI GmbH & Co. KG, a corporation registered in Germany. The registration address is Burgstrasse 37, D-45476, Mulheim An Der Ruhr, Germany.

### **For the Respondent**

The respondent, QINGHUA ZHOU, is the current registrant of the disputed domain name <aldi.hk> according to the Whois information.

## **3、 Parties' Contentions**

### Complainant

The disputed domain name is identical and/or confusingly similar to the Complainant's business name "ALDI". The ".hk" should be discarded.

The Respondent has no rights and/or legitimate interests in respect of the domain name. There is no active website under the disputed domain name. The Respondent has not asserted any purported legitimate interest. According to search on the trademark register, there is no registration or pending application for trademarks bearing "ALDI" filed by the Respondent with the Trade Marks Registry as at today. And the Respondent's registration of the disputed domain name appears to have been intended to exploit the Complainant's "ALDI" trademark and/or business name, rather than using it in a bona fide offering of goods and/or services and/or a legitimate non-commercial use without intent for commercial gain.

The domain names has been registered and used in bad faith. The Complainant or its associated companies all over the world has not licensed or otherwise permitted the Respondent to register the domain name incorporating the trademark "ALDI" and there is no affiliation between the parties. The Respondent is not an authorized agent or licensee of the Complainant's products and/or services in any way. Registration of the disputed domain name by the Respondent has the effect of preventing the Complainant and its associated companies from using its business name and/or trademark rights through a corresponding domain name in Hong Kong. The Respondent is currently running a passive/non-active website, and thus such inactivity constitutes bad faith. The Respondent would not have registered the disputed domain name had he or she conducted a proper trademark search before registering it. The Complainant is an international leader in grocery retailing with over 5000 stores worldwide. The Complainant has a presence in Germany (1600 stores), Great Britain (300 stores) and Ireland as well as in the United States (750 stores in more than 26 states) and in Australia (more than 100 stores). In Germany, three out of four households buy at the Complainant. The Complainant has been using its ALDI trademark in Germany and elsewhere since 1946. Owing to the renowned reputation arising from long and extensive use of "ALDI" by the Complainant, the Respondent should have deliberately selected and registered the disputed domain name without

justification.

Respondent

There are no disputes according to the Chinese Constitutional Law. The Respondent registered the domain name fairly and legally. The Complainant should submit the Complaint within the jurisdiction of the People's Republic of China. The dispute is invalid.

#### **4、 Findings**

The Policy, the Rules, the HKIAC Supplemental Rules, not the Chinese Constitutional Law, are addressed to resolving disputes concerning allegations of abusive “.hk” domain name registration. The HKIAC, not the courts in mainland China, is the designated body to have the jurisdiction over the Complaint for this procedure.

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “An Arbitration Panel shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Dispute Resolution Policy, the Rules of Procedure, the Provider's Supplementary Rules and the law which the Arbitration Panel deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) [The Respondent's] Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
- 2) [The Respondent] has no rights or legitimate interests in respect of the Domain Name; and
- 3) [The Respondent's] domain name has been registered and is being used in bad faith.

Paragraph 4 (b) of the Policy provides the following evidence of registration and use in bad faith:

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the Domain Name; or
- (ii) you have registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating

a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

### **Identical/Confusingly Similar**

The evidence submitted by the Complainant shows that the Complainant owns the trademark ALDI, which has been registered in Hong Kong and many other countries. The registration date of the trademark in Hong Kong is more than two years earlier than the date of the registration of the disputed Domain Name. The Panel has no problem in finding that the Complainant enjoys the indisputable prior rights and interests in the trademark ALDI in Hong Kong and other relevant jurisdictions.

The disputed Domain Name is “aldi.hk”. The panel finds that the main part of the Domain Name “aldi” is identical to the registered trademark (ALDI), given that the “.hk” suffix is to be ignored. The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

### **Rights or Legitimate Interests of the Respondent**

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed Domain Name. The Complainant’s assertion is sufficient to establish a *prima facie* case under the Policy, thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent fails to put forward any evidence to show any positive interests that it relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the disputed Domain Name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

### **Bad Faith**

Evidence shows that the Complainant is a leading grocery retailing worldwide. The Complainant has been consistently using the trademark ALDI since 1946. The trademark ALDI has achieved a strong reputation through use and advertisement. As such, the public has come to recognize and associate the Complainant’s trademark ALDI as originating from the Complainant and no other. Furthermore, “ALDI” is not a common English word. No reasonable justification could be offered for the Respondent to register the disputed domain name using “ALDI” as the main part. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademark ALDI. The action of registering the disputed Domain Name *per se* has constituted bad faith. This action also has the effect of preventing the Complainant from reflecting its trademark in a domain name corresponding to its activities in Hong Kong.

In conclusion, the panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in 4(a)(iii) of the Policy.

## **5、 Decision**

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <aldi.hk> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun  
Sole Panelist

DATED: 9 December 2008