

Decision for dispute CAC-UDRP-104416

Case number	CAC-UDRP-104416
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Time of filing	2022-03-15 09:13:09
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Domain names	aarlafoods.com
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Case administrator

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

Organization	Arla Foods Amba
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Organization	Dangla Dangla, Duncan Mighty Ltd
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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 for the signs “ARLA” and “ARLA FOODS” (the “ARLA and ARLA FOODS trademarks”):

- the Danish trademark ARLA FOODS with registration No. VR 2000 01185, registered on 6 March 2000 for goods in International Classes 1, 5, 29, 30, 31 and 32;
- the International trademark ARLA with registration No. 731917, registered on 20 March 2000 for goods in International Classes 1, 5, 29, 30, 31 and 32;
- the United Kingdom trademark ARLA with registration No.UK00002413775, registered on 4 August 2006 for services in International Class 39; and
- the European Union trademark ARLA with registration No.018031231, registered on 6 September 2019 for goods and services in International Classes 1, 5, 9, 16, 29, 30, 32, 35, 39, 41, 42, 43, 44 and 45.

FACTUAL BACKGROUND

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

The Complainant is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. It was constituted in 2000, and now employs 119,190 people across 105 countries and reached a global revenue of EUR 10,6 billion for the year 2020.

The Complainant owns the domain names <arla.com>, registered on July 15, 1996, <arla.eu>, registered on June 1, 2006, <arlafoods.com> and <arlafoods.co.uk>, registered on October 1, 1999. The Complainant uses these domain names for its official websites.

The Respondent registered the disputed domain name on 22 December 2021. It is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's ARLA and ARLA FOODS trademarks, as it reproduces them in a misspelled form in which they remain easily recognizable.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant submits that the disputed domain name was registered many years after the first registrations of the Complainant's ARLA and ARLA FOODS trademarks, that the Complainant has never authorized the Respondent to use these trademarks and the Parties are not affiliated to each other, and that the Respondent is not commonly known by the disputed domain name and is not making any bona fide offering of goods or services through it. At the time the Complainant sent a cease-and-desist letter to Respondent on 23 February 2022, the disputed domain name resolved to a parked page of the Registrar with the message "WHOIS verification pending".

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It maintains that the ARLA and ARLA FOODS trademarks are well known, and the fact that the Respondent has registered the disputed domain name which is a misspelled version of them indicates that it had knowledge of the Complainant's trademarks at the time of registration of the disputed domain name and its intent was to mimic them.

The Complainant notes that the disputed domain name is inactive, and maintains that its non-use would not prevent a finding of bad faith under the doctrine of passive holding. The Complainant states that there is no legitimate use that could be made of the disputed domain name, and the Respondent never responded to the Complainant's cease-and-desist letter and to the reminder for it.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the ARLA and ARLA FOODS trademarks. The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “aarlafoods”, which reproduces the ARLA and ARLA FOODS trademarks entirely with the addition of the letter “a”. The addition of this non-distinctive element has a low effect on the overall impression made by the disputed domain name, in which the ARLA and ARLA FOODS trademarks are easily distinguishable and dominating, even though in a misspelled form. As discussed in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), a domain name that consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the ARLA and ARLA FOODS trademarks in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that 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. As such, where a complainant

makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent was not authorized to use the ARLA and ARLA FOODS trademarks which were registered many years before the disputed domain name, and is not commonly known under the disputed domain name. The Complainant also points out that the disputed domain name is a misspelled version of the ARLA and ARLA FOODS trademarks and does not resolve to an active website. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name.

In the Panel's view, the circumstances of this case do not contradict the prima facie case made by the Complainant and do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It represents a typosquatted version of the Complainant's ARLA and ARLA FOODS trademarks, which are easily distinguishable and dominate in it. In the lack of any arguments or evidence to the contrary, all the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the ARLA and ARLA FOODS trademarks, has registered the disputed domain name targeting these trademarks in an attempt to exploit their goodwill by confusing and attracting Internet users who may believe that the disputed domain name is affiliated to the Complainant.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

- “(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 website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The registration of the Complainant's ARLA and ARLA FOODS trademarks significantly predates the registration date of the disputed domain name. It reproduces them entirely with a spelling mistake that is difficult to notice, which may lead Internet users to believe that it is affiliated to the Complainant. The Panel is therefore of the view that the Respondent is more likely to have registered the disputed domain name with knowledge of the Complainants' trademark rights and with the intention of taking advantage of their goodwill.

The disputed domain name is inactive, but since it represents a misspelling of the Complainant's ARLA and ARLA FOODS trademarks, and the Respondent has not provided any plausible explanation of its choice of domain name, the Panel is not aware of any good faith use to which the disputed domain name may be put. As submitted by the Complainant, its non-use would not prevent a finding of bad faith under the doctrine of passive holding, taking account of the degree of distinctiveness and reputation of the Complainant's ARLA and ARLA FOODS trademarks, the failure of the Respondent to submit a Response, and the implausibility of any good faith use to which the disputed domain name may be put. See section 3.3 of the WIPO

Overview 3.0.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **AARLAFOODS.COM**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION 2022-04-20

Publish the Decision