

Decision for dispute CAC-UDRP-105098

Case number	CAC-UDRP-105098
Time of filing	2023-01-05 09:19:08
Domain names	arlatrading.com, arlatrading.xyz

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

Name	Levent Derici
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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 names.

IDENTIFICATION OF RIGHTS

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

- International trademark “ARLA” n°731917, registered on March 20, 2000, designating Turkey;
- International trademark “ARLA” n°990596, registered on September 8, 2008, designating Turkey;
- Denmark trademark “ARLA FOODS” n°VR 2000 01185, registered on March 6, 2000.

Moreover, the Complainant is also the owner of the domain names bearing the signs “ARLA” and “ARLA FOODS” such as the domain names <arla.com> (registered on July 15, 1996), <arla.eu> (registered on June 1, 2006), <arlafoods.com>, <arlafoods.co.uk> (registered on October 1, 1999) and <arlafoods.ca> (registered on November 29, 2000).

FACTUAL BACKGROUND

The Complainant, Arla Foods, is a big dairy company and a cooperative owned by more than 12,500 dairy farmers, which was established in 2000 by a merger and operates worldwide.

The Complainant holds several trademark registrations for “ARLA” and “ARLA FOODS” going back to 2000 and the Complainant also holds the domain names bearing “ARLA” and “ARLA FOODS” registered even before 2000.

On June 14, 2022; the Respondent registered the disputed domain names <arlatrading.com> and <arlatrading.xyz>. The disputed domain names are currently inactive and parked.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant requests the Panel to exercise its discretion and allow the language of the proceeding to be English based on the following reasons:

- the disputed domain names incorporate the addition of an English term “trading” very commonly used term in daily English language to the Complainant’s trademark and using such term shows that the Respondent understands English and has intended, by registering such domain name, to target English speaking Internet users;
- The Complainant is a global company, originally founded in Denmark, having its website at “arla.com” displayed in the English language, and it appears that the Respondent is located in Turkey but the Complainant is not familiar with Turkish language. If the Complainant has to provide a translated version of the Complaint and subsequent communications in Turkish in the present proceedings, such translation would entail significant additional costs for the Complainant and delay in the proceedings.
- English language being commonly used internationally, it would therefore be fair to the Parties that the language of the present proceeding be English.

1. THE DISPUTED DOMAIN NAMES ARE CONFUSINGLY SIMILAR

The disputed domain names are confusingly similar to the Complainant’s formerly registered distinctive trademarks, as they bear the Complainant’s “ARLA” trademark as a whole with the addition of the descriptive term “trading”, which would not prevent a finding of confusing similarity.

The Complainant refers to earlier decisions and claims that the top level domains “.com” and “.xyz” are standard registration requirements and will be disregarded, so the domain names remain confusingly similar despite their inclusion.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAMES

The Complainant states that the Respondent has no rights on the disputed domain names as the Respondent is not known as the disputed domain names and as the Respondent does not hold any trademark or domain name with “ARLA”.

The Complainant also states that the Respondent is neither affiliated nor authorized by the Complainant in any way and neither license nor authorization has been granted to the Respondent to use the Complainant’s trademarks “ARLA”.

The Complainant argues that the Respondent is not using the disputed domain names in connection with bona fide offering of goods or services or a legitimate non-commercial or fair use.

In addition, the Complainant states that it tried to reach the Respondent by sending cease and desist letter on August 23, 2022 at the e-mail address as displayed in the WHOIS records. There was no response from the Respondent. At the same time the Complainant claims that it received a response from the Registrar pointing out that the domain names were locked for transfer and advising to proceed with UDRP complaint. The Complainant asserts that it has replied asking to merely forward the letter to the registrant and the Respondent has been granted opportunity to present some compelling arguments that it has rights or legitimate interests in the disputed domain names but has failed to do so.

3. THE DISPUTED DOMAIN NAME WERE REGISTERED AND ARE USED IN BAD FAITH

The Complainant claims that the Respondent registered the disputed domain names many years after the first registrations of the Complainant’s “ARLA” and “ARLA FOODS” trademarks. The Complainant states that “ARLA” is a well-known trademark, as previously held by UDRP panels, and refers to the following cases: Arla Foods Amba v. Fredrik Enghall, WIPO Case No. D2016-1205 and Arla Foods Amba v. Nashan, CAC Case No. 101486. It is claimed that by conducting a simple online search regarding the terms “ARLA TRADING”, the Respondent would have inevitably learned about the Complainant, its trademark and business.

The Complainant asserts that it is inconceivable for the Respondent to be unaware of the existence of the Complainant when he registered the disputed domain names. The fact that the Respondent registered the disputed domain names while knowing about the trademarks of the Complainant constitutes bad faith in registering the disputed domain names.

The Complainant alleges that the disputed domain names have not been using by the Respondent and the passive holding of the disputed domain names demonstrates the bad faith of the Respondent.

The Complainant claims that the well-known trademark “ARLA” being in its entirety along with the descriptive term “trading” in the disputed domain names is very likely to create a likelihood of confusion among Internet users who seek for products or services of the Complainant.

Also, the Complainant states that its attempt to contact the Respondent and his lack of response infers bad faith, as well as the Respondent's identity not being disclosed publicly in WHOIS.

Accordingly, the Complainant alleges that the disputed domain names were registered and are being used 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 names are 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 names (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 names have been registered and are 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.

The Complaint was filed in English but the language of the registration agreement is Turkish. Despite the language of the registration agreement being Turkish, the Complainant requested that the language of the proceeding to be English and explained its reasons.

Paragraph 11(a) of the Rules stipulates that: "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The Panel has duly considered the circumstances of this case. While there is a language requirement foreseen in paragraph 11(a) of the Rules, the Panel has to find the balance for ensuring that the proceeding takes place with due expedition and for the parties to be treated fairly and given a fair opportunity to present their case under Paragraph 10(b) and (c) of the Rules. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay (see *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, [WIPO Case No. D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, [WIPO Case No. D2006-0593](#)). It has been taken into account that no Response has been filed and there was no counter request from the Respondent, and in any case, English is an internationally common language. Consequently, the Panel believes that the Respondent would not be prejudiced if English is adopted as the language of the proceeding and the request of the Complainant is accepted.

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:

1. the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has

rights;

2. the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
3. the disputed domain names have been registered and are 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 names are identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of “ARLA” and “ARLA FOODS” trademarks.

The Panel finds that the disputed domain names are confusingly similar to the Complainant’s “ARLA” trademark and the addition of the term “trading” is not sufficient to vanish the similarity.

Moreover, the addition of the gTLDs “.com” and “.xyz” are not enough to abolish the similarity.

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

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 contends that the Respondent has nothing to do with the Complainant and any use of the trademark “ARLA” has to be authorized by the Complainant but there is no such authorization. Moreover, the disputed domain names have no relation with the Respondent and the Respondent is not commonly known as the disputed domain names.

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 trademarks in the disputed domain names.

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 names, 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 “ARLA” trademark is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the “ARLA” and “ARLA FOODS” trademarks, the Respondent was aware of the Complainant and its trademarks at the time of registration of the disputed domain names (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, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain names is to be

considered an inference of bad faith registration.

Moreover, the disputed domain names are currently parked. Various WIPO panellists is also of the opinion that passive holding does not as such prevent a finding of bad faith. All the circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. The cumulative circumstances for an indication of bad faith include the Complainant having a well-known trade mark, no response having been filed, and the registrant’s concealment of its identity, which all happened in this case.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain names have 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. **arlatrading.com**: Transferred
- 2. **arlatrading.xyz**: Transferred

PANELLISTS

Name	Mrs Selma Ünlü
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DATE OF PANEL DECISION 2023-02-23

Publish the Decision