

Decision for dispute CAC-UDRP-104260

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| Case number | CAC-UDRP-104260 |
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| Time of filing | 2022-01-28 11:27:22 |
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| Domain names | lurpak.top |
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Case administrator

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| Name | Iveta Špiclová (Case admin) |
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Complainant

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| Organization | Arla Foods Amba |
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Complainant representative

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| Organization | BRANDIT GmbH |
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Respondent

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| Organization | ma nan long |
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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 owns numerous trademark registrations for LURPAK® (thereafter the “Complainant’s trademark”), such as but not limited to:

- Chinese TM registration LURPAK No. 11675860 registered on May 14, 2015;
- Chinese TM registration LURPAK No. 11675859 registered on August 28, 2015;
- Chinese TM registration LURPAK ESTD 1901 No. 20470138 registered on March 28, 2018.

The Complainant also owns numerous domain names containing the trademark LURPAK, among them: <lurpak.com> (registered on October 30, 1996), <lurpak.eu> (registered on June 1, 2006), <lurpak.ru>, (registered on October 4, 2009) and others. The Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its ARLA mark and its products and services.

FACTUAL BACKGROUND

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

Factual background

Arla Foods is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. Arla Foods Amba was constituted in 2000, when the largest Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. Arla Foods Amba employs 119,190 people across 105 countries and reached a global revenue of EUR 10,6 billion for the year 2020 (see excerpt of “Consolidated Annual Report 2020”).

Arla Food’s products are easily recognized by the consumers all over the world due to the significant investments of the company in promoting their products and brands and offering high quality products. It sells its milk-based products under its famous brands ARLA®, LURPAK®, CASTELLO®, APETINA® and others.

The Complainant has offices all over the world including in China, where the Respondent seems to be located. Namely, the Complainant has 2 offices in Beijing – Arla Foods Amba and Arla Foods Ingredients.

LURPAK® butter is sold in 75 countries worldwide according to Wikipedia. LURPAK butter sales increased in 2020 by 14.6 percent due to consumers lunching and baking at home. “2020 was another record-breaking year for LURPAK®, breaking last year’s record of 300 million packs of butter and spreads sold by an additional 45 million packs.

Lurpak was launched in the Chinese market in 2000 and sales have been growing ever since.

According to the Complainant’s Annual Report 2020: Our Chinese business performed well in 2020 with revenue growth of 24.3 per cent to EUR 190 million, primarily driven by the milk category. Through our partnership with Mengniu, cheese and butter export sales grew by 73 per cent. The successful launch of liquid Lurpak® contributed to the strong profit and growth in the business.

The Complainant also enjoys a strong online presence via its official website and social media related to Arla Foods in general and the LURPAK trademark specifically. Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world.

Legal grounds

In accordance with Paragraph 4 (a)(i) of the Uniform Dispute Resolution Policy (the “Policy”), in an administrative proceeding the complainant must prove that (i) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights, (ii) the respondent has no right or legitimate interests in respect of the domain name, and (iii) the domain name has been registered and is being used in bad faith.

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant owns numerous LURPAK® trademarks registered many years before the Disputed Domain Name was created on October 28, 2021.

The Disputed Domain Name <lurpak.top> incorporates, in its second-level portion, the Complainant’s trademark LURPAK® entirely.

The generic Top-Level Domain “.top” in the second-level portion is a standard registration requirement and should be disregarded when assessing whether a domain name is confusingly similar to the trademark in which the Complainant has rights (see *Arcelormittal S.A v. James*, supra and *Credit Mutuel Arkea v. Domain Administration*, CAC Case No. 102345).

The Disputed Domain Name is therefore identical to the Complainant's trademark LURPAK®.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Disputed Domain Name was registered on October 28, 2021 - many years after the first registrations of the Complainant's LURPAK® trademarks.

The Complainant has not licensed or authorized the Respondent to register or use the Disputed Domain Name nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent's website.

There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademark including the terms "lurpak.top".

When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms "lurpak.top" or any trademarks owned by the Respondent "Ma Nan Long".

When conducting the search regarding the term "lurpak.top" along with the name of the Respondent "Ma Nan Long" on popular Internet search engines such as "Google.com" there are no relevant returned results that would indicate that the Respondent is known by the Disputed Domain Name.

When searching for the terms "lurpak.top" or "lurpak" and "top" the vast majority of the results relate to the Complainant, their social account and products.

When searching for the e-mail of the Respondent in combination with the terms "lurpak.top" or "lurpak" and "top" there are no returned results showing that the Respondent is known by the Disputed Domain Name.

The Complainant found out about registration of the Disputed Domain Name and sent Cease and Desist Letter on December 7, 2021. At the time of sending the Disputed Domain did not resolve to any active page. At the time of filling of this complaint the Disputed Domain Name does not resolve to any active content either. Therefore, the Disputed Domain Name has not been used in connection with bona fide offering of goods or services.

There is no "evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name" (see *Bollore v. Tywonina W Hill*, WIPO Case No. DCO2017-0012).

The Complainant tried to reach out by sending Cease and Desist Letter on December 7, 2021 via privacy e-mail as provided by the Registrar <DomainAbuse@service.aliyun.com> as there was no other information disclosed in the WHOIS records. On the same day the Registrar has sent an automated response. However, there was no response from the Respondent. The Respondent has been granted several opportunities to present some compelling arguments that it has rights or legitimate interests in the Disputed Domain Name but has failed to do so. This behaviour coupled with the absence of use of the Disputed Domain Name in connection with a bona fide offering of goods and services further demonstrate the Respondent's absence of rights or legitimate interests in respect of the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith

The Respondent registered the Disputed Domain Name many years after the first registrations of the Complainant's LURPAK® trademark. The LURPAK® trademark is registered in many countries of the world including in China where the Respondent is

located and the Complainant enjoys a strong online presence. The Complainant is also very active on social media (Facebook, Twitter, Instagram) to promote its mark, products and services. The Complainant is followed by 1,122,179 people on Facebook and 25,9K people on Twitter and 12.K on Instagram (see Laboratories M&L v. Zhaoxingming, CAC Case No. 102277).

By conducting a simple online search regarding the terms “lurpak.top” or “lurpak.top”, the Respondent would have inevitably learnt about the Complainant, its trademark and business as all top results point to the Complainant (see Intesa Sanpaolo S.p.A. v. Abayomi Ajileye, CAC Case No. 102396).

It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the Disputed Domain Name. The Respondent had the Complainant and its trademark in mind at the time it registered the Disputed Domain Name.

Therefore, the Respondent knew the Complainant’s trademark at the time it registered the Disputed Domain Name and registered the Disputed Domain Name in bad faith.

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which shall be evidence of the registration and use of a domain name in bad faith. Among those circumstances Paragraph 4(b)(iv) of the Policy reads: “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.”

Firstly, as previously mentioned, the Disputed Domain Name incorporates, in its second-level portion, the Complainant’s trademark LURPAK® entirely.

According to WIPO Jurisprudential Overview 3.0., para 2.5.1: “Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation”.

In addition, as mentioned before the Disputed Domain Name has not been resolving to any active website since November 2021 (at least) up until the current moment.

Previously panels stated: The disputed domain name is passively held. It does not resolve to an active website. There is therefore no evidence of any actual or contemplated good-faith use of the disputed domain name, as previous UDRP panels held (see British Airways Plc. v. David Moor, WIPO Case No. D2006-1224; Boehringer Ingelheim Pharma GmbH & Co.KG v. Raju Khan, CAC Case No. 101517).

Moreover, previous UDRP panels have held, under the doctrine of passive holding, that “the non-use of a domain would not prevent a finding of bad faith” (see “WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition”, section 3.3). More precisely, “it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith.” (See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

Moreover, the Complainant tried to contact the Respondent through a cease-and-desist letter. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of their trademarks within the Disputed Domain Name violated their trademark rights and requested a voluntary transfer of the Disputed Domain Name. The Respondent chose not to reply to the cease-and-desist letter sent by the Complainant which infers bad faith (see International Business Machines Corporation v. Adam Stevenson, Global Domain Services, WIPO case No. D2016-1695; Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo, WIPO Case No. D2018-2201).

Lastly, among the numerous domain names registered by the Respondent, some of which also contain third-party trademarks and/or with misspelling (e.g. <malone.link>, <lego1688.com>) which has formed a pattern of conduct that further demonstrates the bad faith of the Respondent.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): Unless 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. Complainant makes this request in light of the Chinese language of the Registration Agreement of the Disputed Domain Name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) English is a neutral language to both parties; 2) Disputed Domain Name are formed in Latin characters; 3) conducting the proceeding in languages other than Chinese would entail significant additional costs for the Complainant and unnecessarily burden the Complainant.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or confusingly similar

The Complainant contends that the Disputed Domain Name <www.lurpak.top> is confusingly similar to the Complaint's trademark and the identifiable part of its famous brand of milk-based products "lurpak". The Complainant, Arla Foods is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. Arla Food's products are easily recognized by the consumers all over the world due to the significant investments of the company in promoting their products and brands and offering high quality products. LURPAK® butter is sold in 75 countries worldwide. LURPAK butter sales increased in 2020 by 14.6 percent due to consumers lunching and baking at home. According to information provided by the Complainant, "2020 was another record-breaking year for LURPAK®, breaking last year's record of 300 million packs of butter and spreads sold by an additional 45 million packs." The Complainant owns numerous trademark registrations for LURPAK®. The Complainant also owns numerous domain names containing the trademark LURPAK, including <lurpak.com>, <lurpak.eu>, <lurpak.ru>, and others.

In this case, the Disputed Domain Name is identical or confusingly similar to the Complainant's trademark LURPAK®. The Disputed Domain Name incorporates the Complainant's trademark LURPAK® entirely. The generic top level domain ".top" does not affect the confusing similarity. The Panel therefore concludes that the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademark LURPAK®.

In this case, because the registrant has used a proxy service in registering the domain name, additional information of the registrant needs to be discovered. The uncovered identity of the registrant, an individual/entity named "ma nan long" seems to have no connection with the Complainant's brand. The Complainant contends that no evidence suggests that the Respondent has been known in any way by the disputed domain name. According to the Complainant, "When searching for the e-mail of the Respondent in combination with the terms "lurpak.top" or "lurpak" and "top" there are no returned results showing that the Respondent is known by the Disputed Domain Name". The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainant's trademark on every page of the disputed website.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

Registration of the disputed domain name in bad faith - As far as registration goes, UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Complainant's trademark registrations predate the registration of the Disputed Domain Name. The fact that the Complainant's trademark is a well-known one and that The Respondent has failed in presenting a credible evidence-backed rationale for registering the Disputed Domain Name implied that the Respondent may have had knowledge of the Complainant's trademark at the time of registration of the Disputed Domain Name. Just like the Complainant suggests, "The LURPAK® trademark is registered in many countries of the world including in China where the Respondent is located and the Complainant enjoys a strong online presence. The Complainant is also very active on social media (Facebook, Twitter, Instagram) to promote its mark, products and services." "By conducting a simple online search regarding the terms "lurpak.top" or "lurpak.top", the Respondent would have inevitably learnt about the Complainant and its trademark". Therefore, it is reasonable to conclude that the registrant registered the disputed domain name with the knowledge of the complainant's trademark and/or brand influence.

Use of the Disputed Domain Name in Bad Faith – Currently, the Disputed Domain Name has not been resolving to any active website since November 2021. According to WIPO Jurisprudential Overview 3.0., para 2.5.1: "Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation". In addition,

the Respondent is not making any active use of the Disputed Domain Name. Previous UDRP panels have also held, under the doctrine of passive holding, that “the non-use of a domain would not prevent a finding of bad faith” (see “WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition”, section 3.3). Moreover, a cease-and-desist letter was sent to the Respondent on December 7, 2021 and the Respondent never responded. Prior Panels have also held that a failure to respond to a cease-and-desist letter can be evidence of bad faith (see e.g., International Business Machines Corporation v. Adam Stevenson, Global Domain Services, WIPO case No. D2016-1695; Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo, WIPO Case No. D2018-2201).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant has provided sufficient evidence that Disputed Domain Name was registered and is being used in bad faith within the meaning of 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. **LURPAK.TOP**: Transferred

PANELLISTS

| | |
|------|--------------|
| Name | Carrie Shang |
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| DATE OF PANEL DECISION | 2022-03-05 |
|------------------------|------------|

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| Publish the Decision | |
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