

Decision for dispute CAC-UDRP-105866

Case number	CAC-UDRP-105866
-------------	-----------------

Time of filing	2023-10-12 09:35:17
----------------	---------------------

Domain names	arlfoods.com
--------------	--------------

Case administrator

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

Complainant

Organization	Arla Foods Amba
--------------	-----------------

Complainant representative

Organization	BRANDIT GmbH
--------------	--------------

Respondent

Name	James Moore
------	-------------

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 in this proceeding is Arla Foods, the fifth-largest dairy company in the world. 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 11,2 billion for the year 2021. It sells its milk-based products under its brands such as ARLA®, LURPAK®, CASTELLO®, APETINA® and others. The Complainant owns numerous EU, international, and jurisdiction-specific (such as in Denmark) trademark registrations for ARLA and ARLA FOODS. The Complainant also owns numerous domain names containing the trademarks ARLA and ARLA FOODS, among them: <arla.com> (registered on July 15, 1996), <arla.ph> (registered on August 31, 2001), <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). 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.

The Respondent has not submitted any response in this case to identify its rights.

FACTUAL BACKGROUND

The Complainant in this proceeding is Arla Foods, the fifth-largest dairy company in the world. 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 11,2 billion for the year 2021. It sells its milk-based products under its brands such as ARLA®, LURPAK®, CASTELLO®, APETINA® and others. The Complainant owns numerous EU, international, and jurisdiction-specific (such as in Denmark) trademark registrations for ARLA and ARLA FOODS. The Complainant also owns numerous domain names containing the trademarks ARLA and ARLA FOODS, among them: <arla.com> (registered on July 15, 1996), <arla.ph> (registered on August 31, 2001), <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). 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.

The disputed domain name was registered on April 11, 2023, years after the first registration of the Complainant's trademarks.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 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

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant in this proceeding is Arla Foods, the fifth-largest dairy company in the world. 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 11,2 billion for the year 2021. It sells its milk-based products under its brands such as ARLA®, LURPAK®, CASTELLO®, APETINA® and others. The Complainant owns numerous EU, international, and jurisdiction-specific (such as in Denmark) trademark registrations for ARLA and ARLA FOODS. The Complainant also owns numerous domain names containing the trademarks ARLA and ARLA FOODS, among them: <arla.com> (registered on July 15, 1996), <arla.ph> (registered on August 31, 2001), <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). 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.

The disputed domain name incorporates, a misspelled version of the Complainant's trademark ARLA®, where the final letter "a" has been removed, followed by the relevant term "foods", which directly refers to the Complainant and its business and leads to consumer

confusion. As the Complainant cited, previous UDRP Panels have stated in this regard that “minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name” (See *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. D2015-1679). gTLDs are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11).

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. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

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 its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, “James Moore”, or its address, also have no connection with the Complainants’ brand. The Complainants did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants’ trademark on pages of the disputed websites.

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. The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. With the reputation of the Arla Foods trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known Arla Foods trademark. The fact that the Complainant’s trademark is a well-known 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. Even assuming that the Respondent was not aware of the presence of the Arla Foods trademark prior to registration, a simple search in an online trademark register or in Google search engines would have informed the Respondent on the existence of the Complainant and its rights in the Arla Foods mark. It is reasonable to infer that the Respondent registered the disputed domain name with the knowledge of the complainant’s trademark and/or brand influence.

Secondly, the use of the disputed domain name was in bad faith. The Complainant notes that it does not resolve, and it did not resolve to an active website in the past. However, pursuant to section 3.3 of the WIPO Overview 3.0, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding if certain circumstances are met. “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.” As the Complainant has rightly pointed out having regard to structure of the domain name in the way confusingly similar to the Complainant’s trademark and without providing additional evidence to prove any potentially legitimate use, it is impossible to think of any good faith use to which the domain name could be put by the Respondent.

At the same time, as the Complainant stated, “the MX (mail exchange, as noted by the Panel) function of the disputed domain name is active, which significantly heightens the risk of phishing, as email recipients could easily be misled into thinking that emails originate from the Complainant once the Respondent starts sending emails from an address associated with the disputed domain name.” Therefore, the Respondent could have registered the disputed domain names to divert internet users to its own websites. According to paragraph 4(b)(iv) of the Policy, “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”, if found by the Panel, shall be considered evidence of registration and use of the domain name in bad faith.

Moreover, a cease and desist letter was sent to the Respondent on 11 August 2023 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., *HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager*, WIPO Case No. D2007-0062).

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 provided prima facie evidence undisputed by the Respondent that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

Accepted

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

- 1. **arlfoods.com**: Transferred

PANELLISTS

Name	Carrie Shang
------	--------------

DATE OF PANEL DECISION	2023-11-25
------------------------	------------

Publish the Decision