Decision for dispute CAC-UDRP-101058

Case number	**CAC-UDRP-101058**
Time of filing	**2015-09-10 10:28:03**
Domain names	**arlaf00ds.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Arla Foods amba**

Complainant representative

Organization	**Zacco Denmark A/S**

Respondent

Organization	**VistaPrint Technologies Ltd**

OTHER LEGAL PROCEEDINGS

none

IDENTIFICATION OF RIGHTS

The Complainant, Arla Foods amba, has proved to be the owner of the following registered trademarks:

• Danish trademark registration VR 01185 2000 ARLA FOODS, registered on March 6, 2000 in classes 1, 5, 29, 30, 31 and 32; • International Registration 731917 ARLA (valid in the US and the EU), registered on March 20, 2000 in classes 1, 5, 29, 30, 31 and 32.

The disputed domain "arlaf00ds.com" was registered on August 15, 2015.

Complainant’s trademark registrations long predate Respondent’s registration of the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant affirms to be a co-operative owned by approx. 13.400 milk producers in Europe, including Denmark, Sweden, Germany, UK and Benelux; that the Arla Foods Group is one of Europe’s largest dairy companies. The Complainant

has registered the trademark ARLA in a very large number of countries in connection with “foodstuffs”. Evidence showing rights of the Complainant in the trademarks ARLA FOODS and ARLA were attached to the complaint.

In addition the Complainant has shown to be the holder of several domain names incorporating "arla" and “arlafoods” including in particular <arla.com>, <arlafoods.org>, <arlafoods.com>, and <arla-foods.com>.

Finally, the Complainant’s company name is Arla Foods amba.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name < arlafoods.com > consists of the Complainant’s trademark ARLA with the addition of the generic word “foods”, with the two O letters in “foods” replaced by a double zero digit. The trademark ARLA is the most prominent and distinctive element of the disputed domain name.

The part of the disputed domain name consisting of the term “f00ds” is a misspelling of the term FOODS, which is descriptive in respect of the type of products offered by Complainant, and which moreover corresponds to the second term of which Complainant’s Danish trademark VR 2000 01185 and Complainant’s company name consist. Visually, the double 0 digit is identical to a double O. Furthermore, the 0 digit is placed right above the letter O in a standard QWERTY keyboard, and it is therefore quite easy to press the 0 button instead of the O by a mistake when typing.

The disputed domain name shall therefore be regarded as identical/confusingly similar to Complainant’s trademarks and company name. In support of this claim, the Complainant refers to WIPO’s decisions in the cases D2000-0588 <gameb0y.com> and D2003-0213 <0pusdei.com> in which the panelist found for the Complainant.

The Complainant further contends: that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name; that there is no evidence of the Respondent’s use of, or 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; that Respondent’s website is a page showing an ad for Respondent’s services and a link to Respondent’s website, where it is possible to purchase Respondent’s services; that there is no indication on the website that the Respondent has made a bona fide use of the domain name or the words ARLA FOODS; that the Complainant has not authorized or licensed the Respondent’s use of its ARLA or ARLA FOODS trademarks. There is thus no evidence that the Respondent has made any legitimate use of the name ARLA FOODS / ARLA F00DS as a trademark or service mark, nor is there any evidence that the Respondent is commonly known as ARLA FOODS / ARLA F00DS.

In addition, the Complainant affirms that considering the well-known character of the trademark ARLA, and the nature of the name and trademark ARLA FOODS, it is most likely that the Respondent was aware of the Complainant, and its trademarks, when the Respondent registered the domain name.

Moreover, the Respondent is clearly making a commercial use of the disputed domain name, as the website under the disputed domain name displays a link to a clearly commercial site. This constitutes “commercial” use of the domain name. In addition, the Respondent is likely to have detected the traffic to the Complainant’s website arlafoods.com (redirecting to arla.com), and attempted to profit from this traffic by registering a misspelling of Complainant’s trademark, company name and domain name. By linking to its website, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark and company name as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website, and this constitutes evidence of bad faith.

The Complainant finally draws the Panel’s attention to the earlier UDRP decisions regarding <arlafood.com>,

<arlafoodingredients.com>, <arlafoodamba.com>, and <arla-foods.org>, and the earlier UDRP decisions in the cases D2014-0988, D2014-0855, D2014-0724, D2011-1604, D2011-0493, D2011-0492 and D2008-0378; and to the fact that the Respondent is not new to the role of a Respondent in UDRP proceedings, as shown by CAC' decisions nos. 101020 <ARCELORMITTALS.COM, ARRCELORMITTAL.COM, ARCCELORMITTAL.COM>, 100957 <eutelsat-france.com> and 100938 <boehringer-ingelheim.com> (the latter is a typosquatting case) and WIPO's decisions in the cases D2015-0886, D2015-0863, D2015-0819, D2015-0769, D2014-1949, D2014-1828, D2014-1387, D2014-0842, D2014-0511, D2009-1168, DCO2015-0016, DCO2015-0014, DCO2015-0009 and DCO2014-0007, all end with transfer to a Complainant or revocation of the registration. Several of the above-mentioned cases are typosquatting cases, e.g. DCO2015-0016, D2014-0842 and D2014-1387.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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 have been met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Complainant's registration and extensive use of the ARLA and ARLA FOODS trademarks for various dairy products sufficiently establishes its right in the mark pursuant to paragraph 4(a)(i) of the Policy. The Panel agrees with the Complainant's assertion that the domain name at issue, arlaf00ds.com, is virtually identical to the trademark ARLA FOODS replacing only the letters "OO" with the numbers "00" and that this registration can constitute a typosquatting variant of Complainant's trademark ARLA FOODS.

Therefore this Panel considers the disputed domain name to be confusingly similar to the Complainant's marks pursuant to paragraph 4(a)(i) of the Policy.

* * *

The Respondent has no connection or affiliation with Complainant, which has not licensed or otherwise authorised the Respondent to use or apply for any domain name incorporating Complainant's trademarks.

The Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. Indeed, the disputed domain name appears to be used to drive Internet traffic inappropriately to Respondent's web site for commercial gain.

The Respondent does not appear to have been commonly known by the disputed domain name.

The Respondent has not proved, affirmed or even alleged to have legitimate rights (within the meaning of paragraph 4(a)(ii) of the Policy) to the disputed domain name.

Therefore, the Respondent has not shown any facts or elements to justify prior rights and/or legitimate interests in the disputed domain name in accordance with the UDRP Policy. The Respondent did not provide any elements to demonstrate, as requested by the Policy, that it has been using or has made preparations to use the disputed domain name or a name corresponding to it in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

* * *

The Respondent's website is a page showing an ad for Respondent's services and a link to Respondent's website, where it is possible to purchase Respondent's services.

This Panel agrees with the Complainant that considering the well-known character of the trademark ARLA, and the nature of the name and trademark ARLA FOODS, it is most likely that the Respondent was aware of the Complainant, and its trademarks, when the Respondent registered the domain name.

This Panel also agrees with the Complainant that Respondent, by linking the disputed domain name to its website, has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark and company name as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, and this constitutes evidence of bad faith.

The Panel finally notes that the Respondent has failed to respond to the Complaint and therefore this Panel is entitled to draw an adverse inference from this. Taking all these factors into consideration, the Panel cannot conceive of any good faith use of the disputed domain name by the Respondent

Further, as pointed out by the Complainant, there have been numerous other UDRP decisions against the Respondent, including:

CAC No. 101020 – ARCELORMITTAL v. VistaPrint Technologies Ltd.,
CAC No.1 00957 - EUTELSA T SA v. VistaPrint Technologies Ltd.,
CAC No.1 00938 - BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. VistaPrint Technologies Ltd
WIPO - D2014-1387 - Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd
WIPO - D2015-0863 - The Net-A-Porter Group Limited v. VistaPrint Technologies Ltd.
WIPO - D2015-0819 - Barry Callebaut AG Barry Callebaut Belgium NV v. VistaPrint Technologies Ltd.
WIPO - D2015-0769 - Carrefour v. VistaPrint Technologies Ltd.
WIPO - D2014-1949 – Statoil ASA v. VistaPrint Technologies Ltd.
WIPO - D2014-1828 – Roper Industries, Inc. v. VistaPrint Technologies Ltd.
WIPO - D2014-1387 – Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd.
WIPO - D2015-0769 - Carrefour v. VistaPrint Technologies Ltd.

These show a pattern of conduct of bad faith registration and use of domain names that are confusingly similar to registered trademarks with a Respondent having no legitimate rights or interests.

Considering the foregoing, the Complainant has, to the satisfaction of the Panel, shown the 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. **ARLAF00DS.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2015-10-20

Publish the Decision