Decision for dispute CAC-UDRP-101487

Case number	**CAC-UDRP-101487**
Time of filing	**2017-03-30 13:49:19**
Domain names	**arlafoodsamba.com**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**A A**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has been continuously the registered proprietor of the trademark ARLA and ARLA FOODS in numerous countries.

Trademark Registration no. Class Date of Registration Type of Registration
ARLA (word mark) 001520899 1, 5, 29, 30, 31, 32 February 24, 2000 EUTM
ARLA (figurative) 001902592 1, 5, 29, 30, 32 October 13, 2000 EUTM
ARLA (figurative colour) 009012981 1, 5, 29, 30, 31, 32 April 8, 2010 EUTM
ARLA FOODS (word mark) VR 2000 01185 1, 5, 29, 30, 31, 32 March 6, 2000 Danish National
ARLA (word mark) UK00002226454 March 20, 2000 UK Trademark

The Complainant is the owner of the registered trademark ARLA as a word mark and device as well as ARLA FOODS in numerous of countries all over the world including in The UK where the Respondent resides.

See for example:
• ARLA (word mark), EUTM Registration number 001520899, registered February 24, 2000

• ARLA (figurative), EUTM Registration number 001902592, registered October 13, 2000
• ARLA (figurative colour), EUTM Registration number 009012981, registered April 8, 2010
• ARLA FOODS (word mark), Danish national registration number VR 2000 01185, registered March 6, 2000
• ARLA (word mark), UK Trademark registration number UK00002226454, registered March 20, 2000

FACTUAL BACKGROUND

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

i) ABOUT THE COMPLAINANT AND THE BRAND ARLA

Arla Foods Amba (hereinafter “Complainant”) is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. As the Complainant is owned by the same farmers who produce the milk, one can be assured that Arla dairy products are based on cows’ milk of a very high quality. The company has operations worldwide, including in Great Britain through its subsidiary Arla Foods UK plc, where the Respondent resides. The company has over 19,000 employees worldwide and reached global revenue of EUR 10.3 billion in 2015. Arla is the UK’s number one dairy company by turnover and milk pool, and is also the country’s largest supplier of butter and spreads and cheese. The UK business has a yearly combined milk pool of circa 3.2 billion litres and a turnover in excess of £2 billion. Arla employs around 4,000 people in the UK through its dairies, distributions centres and head offices.

The Complainant has previously successfully challenged several ARLA domain names through UDRP processes e.g. WIPO Case no: D2016-1205 Arla Foods Amba v Frederik enghall concerning the domain <arla.one>; WIPO Case no: DMX2016-0012 Arla Foods Amba v Zhao Ke concerning the domain name <arlafoods.mx>; WIPO Case no: DAU2016-0001 Arla Foods Amba v. Graytech Hosting Pty Ltd. ABN 49106229476, Elizabeth Rose concerning the domain name <arlafoods.com.au>; WIPO Case no: DME2015-0010 Arla Foods amba v. Ye Li concerning the domain name <arlafoods.me>; and Case no. 101058 Arla Foods amba v. VistaPrint Technologies Ltd concerning the domain name <Arlaf00ds.com>.

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “Arla” and “Arla Foods” see for example, see for example, <arla.com.cn> (created on 2002-12-16) <arlafoods.com> (created on 1999-10-01), <arla.com> (created on 1996-07-15), <arlafoods.co.uk> (created on 1999-10-01) and <arlafoods.net> (created on 2000-02-21).The Complainant is using the domain names to connect to a website through which it informs potential customers about its trademarks and its products and services.

LEGAL GROUNDS:

i) THE DOMAIN NAME IS CONFUSINGLY SIMILAR

The Disputed domain name <arlafoodsamba.com> (hereinafter referred to as the “ Disputed domain name ”), registered on March 5, 2017, directly and entirely incorporates the Complainant’s well-known, registered trademarks ARLA and ARLA FOODS. Neither the addition of the generic Top-Level Domains (gTLD) “.com”, nor the word “amba“ which is the Danish descriptive term for the business structure of the Complainant, forming part of the official business name of the Complainant. Neither “.com” nor “amba” add any distinctiveness to the Disputed domain name. The Disputed domain name incorporates the ARLA trademark coupled with the terms “foods” and “amba”, which are closely connected to the Complainant’s business. This exaggerates the impression that the Respondent is somehow affiliated with the Complainant, and the Respondent is somehow doing business using Complainant`s trademark. See for example WIPO Overview on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.2., as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following “In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test”. This reasoning should apply here and the Disputed domain name should be considered as confusingly similar to the registered trademarks ARLA and ARLA FOODS.

ii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAMES

The Complainant has not found that the Respondent is commonly known by the Disputed domain name. The WHOIS information “A A” is the only evidence in the WHOIS record, which relates the Respondent to the Disputed domain name.

The Respondent has not by virtue of the content of the website, nor by its use of the Disputed domain name shown that they will be used in connection with a bona fide offering of goods or services.

There is no evidence that the Respondent has a history of using, or preparing to use, the Disputed domain name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive identifier associated with the terms “ARLA” and “ARLA FOODS” and that the intention of the Disputed domain name is to take advantage of an association with the Complainant’s business.

THE WEBSITE

At the time of writing of this Decision, the Disputed domain name resolves to pay-per-click (“PPC”) website. In this regard, it was stated in WIPO case no. D2015-1978 Wikimedia Foundation, Inc. v. Domain Hostmaster “Registering a domain name for such pages might be fair, and hence legitimate, if the name was being used for its generic or descriptive value and if the sponsored links on the page were related to that generic or descriptive value…However, it is not legitimate to register a domain name and use it for a PPC parking page where the domain name includes a trademark and has no dictionary or descriptive meaning, and where the sponsored links have no relationship to any alleged descriptive meaning of the domain name”.

In addition, at the WIPO case No. D2016-0394 Facebook, Inc. WhatsApp, Inc. vs. Domain Manager, NA, the Panel found out the following:

“Furthermore, it is by now well established that PPC parking pages built around a trademark do not constitute a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor do they constitute a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii)”.

Further, in the WIPO case No. D2016-1387 Mejeriforeningen Danish Dairy Board v. Liu TianLe, a similar case involving a domain name which resolved to a PPC parking page, the panel found:

“In this case, “lurpak” is not a generic word, and appears to have no common meaning outside of the Complainant’s LURPAK mark. The parking page to which the Disputed Domain Name resolves also includes direct references and pay-per-click links to the Complainant’s “Lurpak” products and to the Complainant’s competitors. Therefore, the Panel finds that the Respondent registered the Disputed Domain Name to trade off the goodwill of the Complainant’s mark in order to increase its pay-per-click revenue, which cannot amount to a legitimate interest or right.”

The Respondent has made no claims to neither having any relevant prior rights of its own, nor to having become commonly known by the Disputed domain name. The Respondent has been granted several opportunities to present some compelling arguments that it has rights in the Disputed domain name but has failed to do so. This behavior coupled with the use of the Disputed domain name cannot be considered as legitimate use of the Disputed domain name.

iii) THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

THE DOMAIN NAME WERE REGISTERED IN BAD FAITH

It has to be highlighted that the Complainant’s trademarks predate the registration of the Disputed domain name and the Respondent has never been authorized by the Complainant to register the Disputed domain name. It is inconceivable that the unique combination of “arla”, “foods” and “amba” in the Disputed domain name is not a deliberate and calculated attempt to improperly benefit from the Complainant’s rights.

THE DOMAIN NAME IS BEING USED IN BAD FAITH

The Complainant tried to contact the Respondent on March 13, 2017, through a cease and desist letter. The letter was sent to the e-mail address listed in the WHOIS record and to the e-mail address listed on the website associated with the Disputed domain name. In the cease and desist letter, the Complainant advised the Respondent that the unauthorized use of its trademarks within the Disputed domain name violated their trademark rights and the Complainant requested a voluntary transfer of the Disputed domain name. As no reply was received, e-mail reminders were sent on March 21 and 24, 2017. The Respondent has simply disregarded such communications. It has been mentioned in earlier cases that the failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith, e.g., News Group Newspapers Limited and News Network Limited v. Momm Amed Ia, WIPO Case No. D2000-1623; Nike, Inc. v. Azumano Travel, WIPO Case No. D2000-1598; and America Online, Inc. v. Antonio R. Diaz, WIPO Case No. D2000-1460.

Since the efforts of trying to solve the matter amicably were unsuccessful, the Complainant chose to file a complaint according to the UDRP process.

THE WEBSITE

As previously noted, the Disputed domain name is a PPC website where Internet visitors find links to unrelated sites. In terms of paragraph 4(b)(iv) of the Policy, this conduct constitutes bad faith as it has also been confirmed in previous cases. The Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the Disputed domain name. Clearly, the Respondent is not known by the Disputed domain name, nor does the Respondent claim to have made legitimate, non-commercial use of the Disputed domain name. Moreover, the Complainant has never authorized the Respondent to use its trademarks in any form. In this regard, at the WIPO case No. D2016-0253 Aldi GmbH & Co. KG Aldi Store Limited v. Greg Saunderson, the Panel found out the following:

“While there is nothing per se illegitimate in using a domain name parking service, linking a domain name to such a service with a trademark owner's name in mind in the hope and expectation that Internet users searching for information about the business activities of the trademark owner will be directed to the parking page is a different matter. Such activity does not provide a legitimate interest in that domain name under the Policy.”

PATTERN OF CONDUCT

A pattern of conduct can involve multiple UDRP cases with similar fact situations or a single case where the respondent has registered multiple domain names which are similar to trademarks. Here, it has to be highlighted that the Respondent using its official email address <ahmed.suleman.sharif@outlook.com>, as indicated in WHOIS Lookup record, has registered aprox. 74 domain names including well-known brands such as <adidasgroupag.com>, <nestlegroupsa.com> and <porscheautomobil.com>. Such pattern of abusive conduct constitutes evidence of bad faith according to Paragraph (6) (ii) of the Policy and this behavior was declared as bad faith registration according to WIPO case No. D2015-1932 Bayer AG of Leverkusen v. huang cheng of Shanghai where the Panel stated that “The Respondent is engaged in registering domain names containing famous marks… This is evidence of a pattern in the misappropriation of well-known marks which cannot be regarded as registration and use in good faith.”. Further, in WIPO Case No DME2015-0010, Arla Foods amba v Ye Li involving the domain <arlafoods.me>, the Panel stated, “Further, the Panel considers it likely that the Respondent was aware of the Complainant's well-known and distinctive trademarks ARLA and ARLA FOODS at the time of registration of the disputed domain name. The Complainant's trademark ARLA is registered in China, which is the Respondent's place of residence, and the Complainant was conducting business in China under the trademarks when the Respondent registered the disputed domain name. The Panel therefore finds that the Respondent’s registration of the disputed domain name was in bad faith”.

Moreover, the Respondent takes advantage of the ARLA and ARLA FOODS trademarks by intentionally attempting to attract visitors to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or a product or service on the Respondent’s

website or location.

From the Complainant's point of view, the Respondent intentionally chose the Disputed domain name based on a registered and well-known trademark in order to only use it for non-legitimate purposes. The conduct of the Respondent in registering domains incorporating other well-known trademarks demonstrates systematic bad faith behavior.

To summarize, the trademarks ARLA and ARLA FOODS are well-known marks worldwide, including in the United Kingdom where the Respondent is located. The Respondent bears no relationship to the trademarks and the Disputed domain name has no other meaning except for referring to the Complainant's business name and trademarks. There is no way in which the Disputed domain name could be used legitimately by the Respondent. Inference of bad faith registration and use of the Disputed domain name is also given by the fact that the Respondent failed to reply to the Complainant's cease and desist letter. Further, the Disputed domain name is being used for a PPC page, an additional element of bad faith in accordance with the applicable cases described at this Complaint. Finally, the Respondent has shown a bad faith pattern of conduct through the registration of dozens of domain names containing other well-known marks.

Consequently, the Respondent should be considered to have registered and to be using the Disputed domain name in bad faith.

PARTIES CONTENTIONS

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

The Panel finds that the Disputed domain name <arlafoodsamba.com> is confusingly similar to the Complainant's trademarks ARLA and ARLA FOODS, the wording "amba" being the Danish word for the legal form of the Complainant, and therefore merely descriptive.

The Complainant contends that it did not authorize nor license the right to use its trademarks to the Respondent, who has made no use of, or demonstrable preparations to use, neither of the Disputed domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the Disputed domain names, and is not commonly known under the Disputed domain name.

The Respondent has no rights of legitimate interests in respect of the Disputed domain name. He has not made or prepared to make a bona fide offering of goods or services using the Disputed domain name, nor any fair or legitimate non-commercial use of it. He is not commonly known by the Disputed domain name and he has no connection with the

Complainant.

The Disputed domain name was registered and is being used in bad faith. In particular, by using the Disputed domain name, the Respondent has intentionally attempted to attract Internet users to a parking webpage for commercial gain (pay per click links) by creating a likelihood with the Complainant's mark as to his website's source, sponsorship, affiliation or endorsement. The presumption of bad faith registration and use in paragraph 4(b)(iv) of the Policy applies.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAFOODSAMBA.COM**: Transferred

PANELLISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2017-05-08

Publish the Decision