Decision for dispute CAC-UDRP-101481

Case number	CAC-UDRP-101481
Time of filing	2017-06-19 09:31:41
Domain names	arla.vip

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	laihu yuan

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, Arla Foods Amba, is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. The Complainant has operations worldwide, including throughout the Asia Pacific region and specifically in China, where it has an office in Beijing. The Complainant has over 19,000 employees worldwide and reached global revenue of EUR 10.3 billion in 2015.

FACTUAL BACKGROUND

The Complainant allegedly owns several trademarks including the distinctive wording ARLA, such as the international registration no. 0731917, registered on March 20, 2000.

The Complainant is also the owner of various domain names, including <arla.com> registered since July 15, 1996, <arlafoods.com> registered on October 1, 2002, and more.

The disputed domain name <arla.vip> was registered by the Respondent identified as “yuan lai hu” on May 18, 2016.

The Complainant has previously successfully challenged several ARLA domain names through UDRP processes. For example: WIPO Case D2016-1205 Arla Foods Amba v Frederik enghall concerning the domain <arla.one>; WIPO Case DMX2016-0012 Arla Foods Amba v Zhao Ke concerning the domain name <arlafoods.mx> and more.

At the time of this decision, the disputed domain names are inactive.

The Panel notes that, the trademark's owner is MD Foods amba, from Skanderborgvej, 277, DK-8260 Viby J Denmark, a company different than the Complainant. However, the Complainant enclosed its business certificate (Annex 2) and under the heading „Binavne", which google translates as "secondary names, the Panel finds list of different names, among them, the registered owner of the trademark above. Therefore, the Panels accepts the claims that the Complainant has rights in the registered trademark above.

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

Language of the Proceeding

Paragraph 11 of the Rules provides that:
"(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."
The language of the Registration Agreement for the disputed domain name is Chinese, as confirmed by the Registrar in its verification email to the Center of October 7, 2016. The Complainant requested that the language of the proceeding be English. The Respondent did not respond to the Complainant's language request.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (Groupe Auchan v. xmxzl, WIPO Case No. DCC2006-0004).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:
(i) The disputed domain name consists of Latin letters, rather than Chinese letters;
(ii) The gTLD used for the Domain Name ".vip" is a commonly used English abbreviation for the phrase "Very Important Person".
(iii) The latest part of the email chain between the Complainant's legal representatives and the Respondent is in English.
(iv) The Complainant has no knowledge of Chinese, and in the present case, the use of a language other than English would impose a significant burden on the Complainant in view of the facts in question.

Upon considering the above, the Panel determines that English be the language of the proceeding.

Principal Reasons for the Decision

1. Rights (paragraph 4(a)(i)of the Policy)

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the owner of trademark registration for the marks ARLA, international registration no. 0731917, registered on March 20, 2000.

The disputed domain name <arla.vip> reproduces the Complainant's registered trademark in its entirety with the generic Top-Level Domain ("gTLD") ".vip".

The addition of the gTLD suffix ".vip" does not have the capacity to distinguish the disputed domain name from the Complainant's registered trademark and is disregarded when comparing the disputed domain name with the Complainant's trademarks.

Accordingly, the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

2. Absence of Rights or Legitimate Interests (paragraph 4(a)(ii)of the Policy).

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name.

The Complainant has stated that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also stated that it has not licensed nor allowed the Respondent to use the disputed domain name.

In the present case, the Complainant has demonstrated to the Panel that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent had failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use the ARLA trademark, or a variation thereof.

The Respondent had not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel finds for the Complainant under paragraph 4(a)(ii) of the Policy.

3. Bad Faith (paragraph 4(a)(iii)of the Policy)

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned a registration for the ARLA trademark since at least the year 2000. It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain name.

The Panel notes that the Complainant has established that its ARLA trademark has been recognized in prior UDRP cases as well-known in connection with the Complainant's activity.

Paragraph 4(b)(iv) of the Policy provides that it will be evidence of bad faith registration and use by a respondent, if by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or online location to which the disputed domain name resolves, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location to which the disputed domain name resolves.

The disputed domain name is identical to the Complainant's trademark.

Previous UDRP panels have found that "[a] likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site." See Hugo Boss Trade Mark Management GmbH & Co. KG and Hugo Boss AG v. Ren Shi Hua, WIPO Case No. D2015-0203. To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

Having regard to the evidence, the Panel finds that the disputed domain name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith. The Respondent's actions therefore constitute bad faith registration and use of the disputed domain name. Further, the disputed domain name is currently inactive which can, in appropriate circumstances, indicate the Respondent's bad faith.

The Panel also notes the evidence submitted by the Complainant, showing the correspondence between the Complainant and the Respondent, including the Complainant's cease-and-desist letter sent to the Respondent on June 2, 2017, the Respondent reply to the Complainant sent on June 4, 2017, asking 80,000$ for the disputed domain name. The Panel finds that this demand exceeds the acceptable out-of-pocket expenses, and this is another clear indication of the Respondent's bad faith registration and use of the disputed domain name.

Based on the evidence that was presented to the Panel, including the Complainant's registered trademarks, the use of the Complainant's trademarks in the disputed domain names, the current use of the disputed domain names and the Respondent's failure to answer the Complaint, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

For all the reasons stated above, the Complaint is Accepted and the disputed domain name <arla.vip> is to be Transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLA.VIP**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2017-07-27

Publish the Decision