Decision for dispute CAC-UDRP-101578

Case number	CAC-UDRP-101578
Time of filing	2017-06-22 13:17:08
Domain names	ArleFood.com

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	ESMM EMPIRE staincollins

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 is the owner of the International Trademark No. 731917 for ARLA (word mark), registered on March 20, 2000, in classes 1, 5, 29, 30, 31 and 32; the Danish trademark No. VR2000 01185 for ARLA FOODS (word mark), registered on March 6, 2000, in classes 1, 5, 29, 30, 31 and 32; the Nigerian trademark Nos. 61420 for ARLA (word mark), registered on March 13, 2000, in class 5, and 95450 for ARLA (figurative mark), registered on October 6, 2008, in class 29.

The Complainant is also the owner, amongst others, of the domain names <arla.ng>, registered on December 10, 2015, <arla.co.za>, registered on August 10, 2001, <arla.com>, registered on July 15, 1996, <arlafoods.com>, registered on October 1, 1999, and <arlafoods.net>, registered on February 21, 2000.

FACTUAL BACKGROUND

The Complainant is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. It has operations worldwide, including throughout the African Continent where it operates in Nigeria, Ivory Coast and Senegal. In the case of Senegal, the Complainant signed a joint-venture agreement with the Attieh Group in 2015. As to Nigeria, the Complainant operates under the domain name <arla.ng> and in 2015 signed a joint-venture agreement with the Tolaram

Group by which it expects to grow its revenue to 240 million euro by 2020. The Complainant has over 19,000 employees located worldwide and its global revenue reached EUR 10.3 billion in 2015.

The disputed domain name <arlefood.com> was registered on June 12, 2017 and is currently not pointed to an active website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS.

COMPLAINANT

The Complainant states that, due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world, including in Nigeria where, the Respondent is located.

The Complainant contends that the disputed domain name incorporates a confusingly similar version of the Complainant's registered and well-known trademarks ARLA and ARLA FOODS, being a typo-variant domain name, where the letter "e" has been used to replace the similar looking, and phonetically similar letter "a".

The Complainant asserts that the Respondent does not have right or legitimate interest in the disputed domain name since i) the Complainant has not found that the Respondent is commonly known by the disputed domain name; ii) the Respondent has not shown that it has used or will use the disputed domain name in connection with a bona fide offering of goods or services; iii) when entering the terms "Arla" and "Nigeria" as well as "Arla foods" and "Nigeria" on Google engine search, all returned results relate to the Complainant and its business activity, thus the Respondent could have easily performed a similar search before registering the disputed domain name and would have easily ascertained that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in Nigeria; iv) it is clear that the Complainant has become a distinctive identifier associated with the term ARLA and that the intention of the disputed domain name is to take advantage of an association with the Complainant's business; v) the Respondent does not claim to have made legitimate, non-commercial use of the disputed domain name; vi) the Complainant has never authorized the Respondent to use its trademark in any form; and vii) the disputed domain name has been used to send emails purporting to be from the Complainant and requesting to pay a false invoice; therefore, the Respondent is attempting to pass itself off as the Complainant and attempting to take undue advantage from the registration of the disputed domain name.

The Complainant states that the Respondent registered the disputed domain name in bad faith because the Complainant's trademarks predate the registration of the disputed domain name, the Respondent has never been authorized by the Complainant to register the disputed domain name and the evidence shows that the unique combination of "arlefood" in the disputed domain name was a deliberate and calculated attempt to improperly benefit from the Complainant's rights.

The Complainant also contends that the Respondent used the disputed domain name in bad faith since misspelling of a complainant´s well-known mark is usually considered as an indicia of bad faith registration and use, and the disputed domain name has been used to fraudulently send emails in the name of Complainant's employees, in an attempt to commit fraud and deceptively steal sensitive information.

RESPONDENT

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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 Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks ARLA and ARLA FOODS, as it reproduces the trademarks in their entirety, with the mere substitution of the second letter "a" of the trademark with the letter "e". As stated in a number of prior cases decided under the Policy, a domain name which consists of an obvious or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element.

2. The Complainant stated that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence of the fact that the Respondent might have been commonly known by the disputed domain name or by a name corresponding to the disputed domain name. According to the records, the Respondent has used the disputed domain name to send email communications purporting to be from the Complainant and requesting to pay a false invoice. In light of the evidence submitted, it is clear that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or service or for a legitimate noncommercial or fair use. To the contrary, it appears that the Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent.

3. In light of the Complainant's prior registration and use of the trademarks ARLA and ARLA FOODS, including in Nigeria, where the Respondent is located according to the WhoIs records, the Respondent was or could have been aware of the trademarks at the time of the registration of the disputed domain name, with which it is confusingly similar. The Respondent's use of the disputed domain name to send emails pretending to be from the Complainant, clearly demonstrates the Respondent's knowledge of the trademarks and its willingness to take an unfair advantage from the likelihood of association of the disputed domain name with the Complainant and its distinctive signs. As recognized in previous UDRP decisions, the use of a domain name for purposes other than to host a website may constitute bad faith where, like in the case at hand, the circumstances suggest that the disputed domain name has been used for fraudulent purposes such as the sending of deceptive emails to obtain sensitive or confidential personal information or to solicit payment of fraudulent invoices by the Complainant's actual or prospective customers.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLEFOOD.COM**: Transferred

PANELLISTS

Name	**Luca Barbero**

DATE OF PANEL DECISION 2017-08-09