Decision for dispute CAC-UDRP-101640

Case number	**CAC-UDRP-101640**
Time of filing	**2017-08-08 10:50:22**
Domain names	**eu-arlafoods.com**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**melanie guerin**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, namely Arla Foods Amba, owns several trademarks protected throughout the world, including the following trademarks:
- European Union trademark ARLA No. 001520899, filed on February 24, 2000, and duly renewed, covering goods in classes 1, 5, 29, 30, 31 and 32;
- Semi-figurative European Union trademark ARLA No. 001902592, filed on October 13, 2000, duly renewed and covering goods in classes 1, 5, 29, 30 and 32;
- Semi-figurative European Union trademark ARLA No. 009012981, filed on April 8, 2010, and covering goods in classes 1, 5, 29, 30, 31 and 32;
- Danish trademark ARLA FOODS No. VR 2000 01185, filed on March 6, 2000, duly renewed and covering goods in classes 1, 5, 29, 30, 31 and 32.

FACTUAL BACKGROUND

The Complainant is Arla Foods Amba, a global dairy company and cooperative, owned by 12,650 dairy farmers in seven countries. The company has operations worldwide, including in France through their subsidiaries Arla Foods France & Arla Foods S.a.r.l., 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 operating in France under the domain name <arlafoods.fr>. These elements, asserted by the Complainant were not refuted by the Respondent.

The Complainant owns numerous trademarks, protected throughout the world. Some of them were filed in the year 2000.

The Respondent registered the disputed domain name <eu-arlafoods.com> on June 19, 2017.

The registration agreement which applies to the disputed domain name is in French. Therefore, the proceeding should be in French. However, the Complainant has submitted observations in order to obtain that English be the language of proceeding. This request was not contested by the Respondent.

PARTIES CONTENTIONS

Firstly, the Complainant has requested that English be the language of the proceeding and for it relies on several elements:
- The Respondent has not replied to the cease-and-desist letter sent by the Complainant nor stated that she did not understand its content;

- The disputed domain name includes the Complainant's trademark. The Complainant is Danish and its business language is English;

- The Respondent has registered other domain names containing English terms. Hence, the Respondent seems to be familiar with the English language;

- The disputed domain name features the gTLD <.com>, which is commercial and applies to a large audience. If the Respondent intended to target French consumers, she would have for instance chosen the ccTLD <.fr>;

- The proceeding will likely be put through unnecessary trouble and delay if French was the language of the proceeding and there would be no discernible benefit to the parties or the proceeding, in the circumstances, that may be gained by maintaining the default language.
Secondly, the Complainant has submitted observations on the substantive part of the proceeding.

The Complainant states that the disputed domain name is confusingly similar to its ARLA trademark and that the addition of the terms "foods" and "eu" increase the likelihood of confusion since they are connected to its business.

Further, the Complainant argues that the Respondent is not commonly known by the disputed domain name and that she does not benefit from any authorization to use its trademark in any form. It also argues that the disputed domain name is not actively used in a manner that could demonstrate the will to use it in connection with a bona fide offering goods and services since it resolves to a parking website.

The Complainant indicates that the disputed domain name has been registered in bad faith because it is clear that the Respondent had the Complainant's trademark in mind at the time of the registration. Regarding use in bad faith, the Complainant states that passive holding does not preclude use of the disputed domain name in bad faith.

The Respondent has not replied to the complaint and is therefore in default.

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- Language of the Proceeding

According to Article 11(a) of the Rules, “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”.

In the present case, the registrar is Gandi SAS and the language of the registration agreement is French. However, the Complainant has requested that the language of the proceeding be English instead of French. These observations included all arguments mentioned in the “Parties’ Contentions” section of this decision.

In view of the circumstances surrounding the case, the Panel agrees that the language be English since:
- The disputed domain name is constructed in English. Indeed “EU” is the ISO code for European Union. If the targeted consumers were French-speaking ones, the letters would have probably been reversed: “UE” (Union européenne) and the chosen TLD would have probably been <.fr>. The word “foods” is an English one and the disputed domain name features the gTLD <.com>, which has a global connotation and therefore, English being the main language of business, it seems that the disputed domain name was intended to reach a global public or at least, an English-speaking one.

- The Respondent has not replied to the Complainant’s cease-and-desist letter, notably to state that she does not understand English.

- The Respondent has not replied to the present complaint nor contested the Complainant’s request for change of language.

Thus, since language requirements should not generate undue burdens on the Parties and undue delay to the proceeding (See e.g. Organization Administradora de Marcas RD, S. de R.L. de C.V. v. Juan Hernandez, CAC Case No. 101622), the Panel confirms that English is the language of the proceeding.

2- Rights

The Complainant has demonstrated that it is the owner of numerous trademark registrations for the sign “ARLA” in the European Union, where the Respondent is located. Among these trademarks, the Complainant owns the verbal trademark “ARLA” No. 001520899, registered since May 7, 2001, duly renewed and covering goods in classes 1, 5, 29, 30, 31 and 32. The Complainant also has a Danish verbal trademark for the sign “ARLA FOODS”, No. VR 2000 01185, registered since March 6, 2000, and duly renewed. This trademark also covers goods in classes 1, 5, 29, 30, 31 and 32.

In the present case, the disputed domain name incorporates the above trademarks in their entirety, the only distinction being the addition of the letters “EU”, which corresponds to the ISO code of the European Union – where the Complainant owns several trademarks – and of a hyphen between said ISO code and the sequence “ARLA FOODS”. The ISO code as well as the presence of the hyphen are “insignificant to the overall impression” of the disputed domain name (See e.g. Amundi v. hilscher of lo, CAC case No. 101593).

Besides, gTLDs – such as <.com> here – are not to be taken into consideration when assessing the likelihood of confusion since they are only a technical requirement (See e.g. Crédit Agricole S.A. v. Roy M Oishi, CAC case No. 101545).

Consequently, the Panel finds that the disputed domain names is highly similar to the Complainant's trademark and that 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).

3- No rights or legitimate interests

From the observations submitted by the Complainant, it seems clear that there is no link, such as a business relationship, between the latter and the Respondent. The Complainant did not authorize the Respondent to use its trademark nor to register the disputed domain name.

Further, the Respondent is not commonly known by the domain name since the Whois information indicate her name to be "Melanie Guerin". Hence, whether true or false identity, this name is not similar to "EU-ARLAFOODS".

Therefore, the Complainant has, in the Panel's views, made a prima facie case showing that the Respondent has no rights or legitimate interests in respect to the disputed domain name.

Hence, the burden of proof shifts from the Complainant to the Respondent, whom has not answered the complaint. "Lack of any response is another element against Respondent's legitimate use or interest in the dispute domain name" (See e.g. Loro Piana S.p.A. v. Robert Remy, CAC Case No. 101595).

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).

4- Bad Faith

In consideration of the construction of the disputed domain name, it seems implausible that the Respondent did not have the Complainant's trademark "ARLA" and even "ARLA FOODS" in mind when registering the disputed domain. Indeed, the distinctive part of the domain name is constituted of said trademarks.

Furthermore, the Respondent is based in France, where the Complainant owns valid trademark rights and which predate the registration of the disputed domain name. Besides, the Complainant's ARLA trademark has been defined as well known in previous UDRP cases (See e.g. Arla Foods Amba v. laihu yuan, CAC case No. 101481).

The Complainant has shown that it it has tried to solve the situation amicably through a cease-and-desist letter, sent to the Respondent on June 23, 2017. Nevertheless, no response was received from the latter despite several reminders, which is an indication of registration in bad faith (See e.g. Lovehoney Group Limited v. Jordan, CAC case No. 101621).

Hence, the Panel finds that the disputed domain name was registered in bad faith.

Now, regarding use of the disputed domain name in bad faith, the Panel notes that the disputed domain name resolves to a default page of the registrar, as shown on the screenshot delivered by the Complainant.

It can therefore be considered that the disputed domain name is not actively used. Nonetheless, passive holding of a domain name does not preclude use of it in bad faith (See e.g. Telstra Corporation Limited v. Nuclea Marshmellows, WIPO Case No. D2000-0003). Circumstances surrounding the case must be analyzed to conclude whether or not the domain name is used in bad faith.

In the present case, numerous elements tend to demonstrate the use in bad faith of the disputed domain name by the Respondent. Among them, the fact that the Respondent has not replied to the cease-and-desist letter sent by the Complainant nor to the present complaint. Also, the fact – raised by the Complainant – that the Respondent is the owner of

multiple domain names, which appear to be constructed as the present disputed domain names (namely <ISOcode-trademark.TLD>) involving third parties' trademarks, such as <it-ford.com> or <eu-heineken.com>.

In view of the above, 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EU-ARLAFOODS.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2017-09-19

Publish the Decision