Decision for dispute CAC-UDRP-101709

Case number	CAC-UDRP-101709
Time of filing	2017-10-04 11:37:37
Domain names	arla-group.com

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	DomCollect International GmbH

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

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

Danish trademark registration VR 2000 01185 ARLA FOODS, registered on March 6, 2000 in classes 1, 5, 29, 30, 31 and 32;

EUTM registration 001520899 ARLA (word mark), registered on May 7, 2001 in classes 1, 5, 29, 30, 31, 32;

EUTM registration 001902592 ARLA (figurative), registered on March 22, 2002 in classes 1, 5, 29, 30, 32;

EUTM registration 009012981 ARLA (figurative colour), registered on September 27, 2010 in classes 1, 5, 29, 30, 31, 32.

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FACTUAL BACKGROUND

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

The Complainant affirms to be a co-operative owned by approx. 12.650 dairy farmers in seven countries; that the Arla Foods

Group is one of Europe’s largest dairy companies. The Complainant has registered the trademarks ARLA and ARLA FOODS in a very large number of countries in connection with “foodstuffs”.

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.

The Domain Name is pointing to a pay-per-click (“PPC”) website where inter alia, links to the Complainant as well as to the Complainant’s competitors are displayed.

The disputed domain name was registered on June 21, 2017.

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

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to the Complainant’s “ARLA” and “ARLA FOODS” registered trademarks; that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

Specifically the Complainant claims that:

1. Identity or Confusing Similarity

The disputed domain name incorporates the ARLA trademark coupled with the word “group”.

The addition of the generic term “group” gives the impression that Respondent is somehow affiliated with Complainant, and thus it adds confusion rather than avoids it.

2. Rights or Legitimate Interests

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for any domain name incorporating any of those marks. The Respondent has not replied to the cease and desist letter sent by the Complainant to cite any circumstance that could demonstrate its rights on or legitimate interests in the disputed domain name. The Respondent has no rights on or legitimate interests in the disputed domain name.

3. Registration and Use in Bad Faith

It is highly unlikely that the Respondent was not aware of the rights of the Complainant in the trademarks or of the value of said trademarks at the time of the registrations. The Respondent bears no relationship to the trademarks and the disputed domain name has no other meaning except to refer to the Complainant's name and trademarks. There is no way in which the disputed domain name could be used legitimately by the Respondent. Further, the disputed domain name redirects to a pay-per-click website using advertisements with the Complainant’s trademark and with those of its competitors which do not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use in accordance with to the longstanding judicial practice of the WIPO. Inference of bad faith registration and use of the disputed domain name is also given by the fact that the Respondent has not replied to the Complainant’s cease and desist letter. It is reasonable to assume that if the Respondent did have legitimate purposes in registering and using the disputed domain name it would have responded. Finally, the website has pay-per-click advertisements that are not only related to the Complainant´s

products but also to those of the Complainant´s competitors. Consequently, the Respondent should be considered to have registered and to be using the disputed domain name in bad faith.

RESPONDENT:

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

A) Confusing similarity

The Panel agrees with the Complainant's assertion that the addition to the ARLA trademark of the generic term “group” gives the impression that the Respondent is somehow affiliated with the Complainant, and thus it adds confusion rather than avoids it.

B) Lack of legitimate rights or interests

The disputed domain name at issue is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights on or legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights on or legitimate interests in that name. The Respondent has made no attempt to do so.

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

C) Registered or Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, the registration of the Complainant’s trademark predates the registration of the disputed domain name, so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant’s trademark when registering the disputed domain name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark.

Thirdly, it appears from the document provided by the Complainant that the Respondent is using the disputed domain name and the corresponding website for commercial gain by resolving to a pay-per-click website where, inter alia, links to the Complainant as well as to the Complainant's competitors are displayed.

Fourthly, the Respondent has not responded to nor denied any of the assertions made in the Complaint and has not replied to the Complainant's cease and desist letter.

Lastly, the Respondent has been involved in at least one other UDRP proceeding, i.e. D2015-0636 AB Electrolux vs DomCollect AG – DomCollect International GmbH regarding the domain name <zanussiserviciotecnicovalencia.net>, and this is also a further inference of bad faith registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLA-GROUP.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2017-11-06

Publish the Decision