Decision for dispute CAC-UDRP-101764

Case number	CAC-UDRP-101764
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Domain names	arlafarmer.com

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	I S / ICS INC

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

According to the evidence provided, the Complainant owns a portfolio of trademarks including the wording “ARLA” and "ARLA FOODS" in several countries, e.g. as follows:

TM: ARLA (word mark)
Reg. No. 001520899
Class: 1, 5, 29, 30, 31, 32
Date of registration: February 24, 2000
Type of registration: EUTM

TM: ARLA (figurative)
Reg. No. 001902592
Class: 1, 5, 29, 30, 32
Date of registration: October 13, 2000

Type of registration: EUTM

TM: ARLA (figurative colour)
Reg. No. 009012981
Class: 1, 5, 29, 30, 31, 32
Date of registration: April 8, 2010
Type of registration: EUTM

TM: ARLA FOODS (word mark)
Reg. No. VR 2000 01185
Class: 1, 5, 29, 30, 31, 32
Date of registration: March 6, 2000
Type of registration: Danish National

TM: ARLA FOODS (word mark)
Reg. No. VR 2000 01185
Class: 1, 5, 29, 30, 31, 32
Date of registration: March 6, 2000
Type of registration: Danish National

TM: ARLA
Reg. No. 3325019
Class: 1 & 29
Date of registration: October 30, 2007
Type of registration: USA National

TM: ARLA
International Reg. No. 731917
Class: 1, 5, 29, 30, 31 & 32
Date of registration: March 20, 2000
Type of registration: IR.

Complainant has also registered a number of domain names under generic Top-Level Domains and country-code Top-Level Domains containing the term “Arla” and “Arla Foods” for example, <arla.com.> (created on July 15, 1996) <arlafoods.com> (created on October 1, 1999), <arlafoodsusa.com> (created on November 9, 2005).

FACTUAL BACKGROUND

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

The Complainant is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. As 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 USA through their subsidiaries; e.g. Arla Foods Inc., USA 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 the USA under the domain name <arlausa.com>.

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.

• ARLA, Reg. No. 3325019, registered October 30, 2007
• 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

Complainant has also registered a number of domain names under generic Top-Level Domains and country-code Top-Level Domains ("ccTLD") containing the term “Arla” and “Arla Foods” see for example, <arla.com.> (created on July 15, 1996) <arlafoods.com> (created on October 1, 1999), <arlafoodsusa.com> (created on November 9, 2005). 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.

The Disputed domain name was registered by Respondent on September 25, 2017.

The Complainant states that the Disputed domain name is confusingly similar to the Complainant’s Trademarks "ARLA" and "ARLA FOODS" and domain names associated.

The Disputed domain name was registered on September 25, 2017 and it entirely incorporates Complainant’s registered trademark ARLA. The Complainant states that the addition of the generic Top-Level Domains (gTLD) “.com” does not add any distinctiveness to the Disputed domain name. The Disputed domain name incorporates the ARLA trademark coupled with the word “FARMER”, a term in the view of Complainant closely connected to the Complainant’s business, which exaggerates the impression that Respondent is somehow affiliated with Complainant, and Respondent is somehow doing business using Complainant`s trademark.

Complainant therefore is of the opion that the Disputed domain name should be considered as confusingly similar to the registered trademark ARLA.

Complainant states that the Respondent has no rights or legitimate interest in respect of the Disputed domain name and is not commonly known by the Disputed domain name or has shown that the Disputed domain name will be used in connection with a bona fide offering of goods or services.

The Complainant asserts that the Disputed domain name is pointing to a pay-per-click (“PPC”) website where Internet visitors find related links to Complainant’s products and trademarks.

The Complainant points out, that it’s trademarks predate the registration of the Disputed domain name and that the Respondent has never been authorized by Complainant to register the Disputed domain name.

The Complainant tried to contact Respondent on October 2, 2017 through a cease and desist letter. The letter was sent to the e-mail address listed in the whois record associated with the Disputed domain name. In the cease and desist letter, Complainant advised Respondent that the unauthorized use of its trademarks within the Disputed domain name violated their trademark rights and Complainant requested a voluntary transfer of the Disputed domain name. A reminder was sent on October 16, 2017 and on October 23, 2017. However, no reply was received.

After sending the cease and desist letter, the Registrant´s details were updated to a Private Registry Service. This is in the view of Complainant a first indication of bad faith by hiding Respondent´s real identity after receiving the cease and desist letter.

Finally, Complainant points out the fact that the Disputed domain name might be for sale at Afternic.com, which is another indication of bad faith in terms of paragraph 4(b)(i) of the Policy since the Disputed domain name was mainly registered for the purpose of selling or otherwise transferring the Disputed domain name to the Complainant or to Complainant´s competitors for valuable consideration in excess of any documented out-of-pocket costs directly related to the Disputed domain name.

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

1.

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.

From the evidence provided, and not contested by the Respondent, the Complainant owns a number of trademark registrations for the mark "ARLA".

The Disputed domain name reproduces the Complainant’s registered Trademark in its entirety with the generic Top-Level Domain (“gTLD”) “.com”.

The addition of the gTLD suffix “.com” does not have the capacity to distinguish the Disputed domain name from the Complainant’s registered Trademark and are disregarded when comparing the Disputed domain name with the Complaintant’s Trademark.

The Disputed domain name <arlafarmer.com> differs for its part from the "ARLA" Trademark by the addition of the word “farmer" at the end of the Disputed domain name.

In the present case, the addition of the term "farmer" does not serve sufficiently to distinguish or differentiate the Disputed domain name from the Complainant’s "ARLA" Trademark. It is clear that the most prominent element in the Disputed domain name is the term “ARLA” at the beginning of the Disputed domain name. This addition cannot serve to distinguish the Disputed domain name from the Complainant’s Trademark.

Moreover, as the word “farmer” refers to the diary products of the Complainant and is therefore a term closely connected to the Complainant’s business, it therefore exaggerates the impression that Respondent is somehow affiliated with Complainant.

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

2.
Next, the Panel finds, that the Respondent lacks rights or legitimate interest in the Disputed domain name. 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 or its Trademarks.

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.
The Complainant must show that the Respondent registered and is using the Disputed domain name in bad faith (Policy, paragraph 4(a)(iii)).

The Complainant send on October 2, 2017 a cease and desist letter to the Respondent. The Respondent did not respond to the cease and desist letter but updated the Registrant´s details to a private registry service. This is a first indication of bad faith by trying to hide Respondent´s real identity after receiving the cease and desist letter.

Furthermore, the Disputed domain name is pointing to a pay-per click website using advertisements and is not used with real content.

Finally, the Disputed domain name is for sale on the domain marketplace <sedo.com> for US $ 1,895. This is another indication of bad faith in terms of paragraph 4(b)(i) of the Policy since the Disputed domain name was mainly registered for the purpose of selling or otherwise transferring theDisputed domain name to the Complainant or to Complainant´s competitors for valuable consideration in excess of any documented out-of-pocket costs directly related to 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 name, the current use of the Disputed domain name and the Respondent's failure to answer the Complainant after receiving a cease and desist letter and using a whois privacy service provider after being contacted by Complainant, the Panel finds that the Disputed domain name was registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAFARMER.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2017-12-18

Publish the Decision