Decision for dispute CAC-UDRP-101787

Case number	**CAC-UDRP-101787**
Time of filing	**2017-11-29 10:29:57**
Domain names	**ukarlafoods.com**

Case administrator

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

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**Tahir Shah**

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 owns the following trade mark registrations:

a) ARLA (word mark), EUTM registration number 001520899, registered 24 February 2000.
b) ARLA (figurative), EUTM registration number 001902592, registered 13 October 2000.
c) ARLA (figurative colour), EUTM registration number 009012981, registered 8 April 2010.
d) ARLA FOODS (word mark), Danish national registration number VR 2000 01185, registered 6 March 2000.
e) ARLA (word mark), UK trade mark registration number UK00002226454, registered 20 March 2000.

These trade mark registrations predate the registration of the disputed domain name on 31 October 2017.

FACTUAL BACKGROUND

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

Arla is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. The company has

operations worldwide. In the UK, Arla operates through its subsidiary, Arla Foods UK plc. Arla has over 19,000 employees worldwide and reached global revenue of EUR 10.3 billion in 2015. The UK business has a yearly combined milk pool of circa 3.2 billion litres and a turnover in excess of £2 billion.

The Complainant, Arla Foods Amba, is the owner of the registered trade marks ARLA as a word mark and device as well as ARLA FOODS in numerous of countries all over the world including in the UK. The Complainant's trade marks registrations predate the registration of the disputed domain name.

The Respondent registered the disputed domain name on 31 October 2017.

On 7 November 2017, the Complainant sent a cease and desist letter to the Respondent's e-mail address listed in the Whois record. Reminders were sent on 13 November and 20 November 2017. On 21 November 2017, the Respondent replied to the letter as follows: “Hi I no longer own this domain. Apologies for the confusion.”

On 27 November 2017, the Whois record was changed replacing the Registrant Name, Admin Name and Tech Name, as well as the phone and e-mail details, with "*" characters, rather than legitimate contact information.

The Complainant has also registered a number of domain names under generic top-level domains ("gTLD") and country-code top-level domains ("ccTLD") containing the term “Arla” and “Arla Foods”. For example, <arlafoods.com> (registered 1 October 1999), <arla.com> (registered 15 July 1996), <arlafoods.co.uk> (registered 1 October 1999) and <arlafoods.net> (registered 21 February 2000). The Complainant is using the domain names to connect to a website through which it informs potential customers about its trade marks, products and services.

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 trade mark 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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain name.
(iii) The disputed domain name has been registered and used in bad faith.

A. Identical or confusingly similar

The Complainant submits that in previous decisions, ARLA and ARLA FOODS have been considered well-known trade marks, for example WIPO Case no: DAU2016-0001 concerning <arlafoods.com.au>; WIPO Case no: DME2015-0010 concerning <arlafoods.me>; and CAC Case no. 101058 concerning <arlafoods.com>.

It is well established that the generic top level suffix.com may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

The Panel is satisfied that the Complainant is the owner of the registered trade marks ARLA and ARLA FOODS, which predate the registration of the disputed domain name. The disputed domain name incorporates entirely the Complainant's the well-known trade mark ARLA FOODS. The addition of the geographic identifier "UK" does not prevent the disputed domain name being confusingly similar to the Complainant's trade mark ARLA FOODS.

The Panel finds that the disputed domain name is confusingly similar the Complainant's trade mark ARLA FOODS, and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. No rights or legitimate interests

The Complainant submits that the Respondent has no rights or legitimate interest in the disputed domain name and states that:
(i) The Respondent is not commonly known by the disputed domain name.
(ii) The Respondent has not shown, either by the content of the website or its use of the disputed domain name, that the disputed domain name has or will be used in connection with a bona fide offering of goods or services.
(iii) The terms ARLA and ARLA FOODS have become a distinctive identifiers associated with the Complainant and that the Respondent's intention in registering the disputed domain name is to take advantage of an association with the Complainant's business.
(iv) The disputed domain name is pointing to pay-per-click (PPC) websites where Internet visitors find related links to the Complainant's products and trade marks.
(v) As stated in WIPO case No. D2016-0394 Facebook, Inc. WhatsApp, Inc. vs. Domain Manager, NA: "… it is by now well established that PPC parking pages built around a trade mark do not constitute a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor do they constitute a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii)".

The Complainant has established a prima facie case that the Respondent has not rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent. The Respondent has not filed a Response nor disputed any of the Complainant's submissions. The Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the disputed domain name. There is no evidence that the Respondent has used or has been preparing to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

The Panel finds that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith

The Complainant's well-known trade marks, ARLA and ARLA FOODS, predate the Respondent's registration of the disputed domain name. The Panel finds that it is highly unlikely that the Respondent was unaware of the Complainant's rights when it the registered the disputed domain name.

The Panels agrees with the Complainant that registering the disputed domain name, which combines "UK" with the

Complainant's trade mark ARLA FOODS, appears to be a calculated attempt by the Respondent to improperly benefit from the Complainant’s rights.

On 21 November 2017, in response to the Complainant's cease and desist letter, the Respondent replied as follows: “Hi I no longer own this domain. Apologies for the confusion”. On 27 November 2017, the Whois record was changed replacing the Registrant Name, Admin Name and Tech Name as well as the phone and e-mail details with "*" characters, rather than legitimate contact information. The Panel finds that effectively removing the contact information within the Whois database, by replacing it "*" characters, is further evidence of bad faith on the part of the Respondent.

The website using the disputed domain name includes a link "Arla Food Jobs", which points to a website with a jobs notice board that appears to be a pay-per-click website. The Panel finds the Respondent to be taking advantage of the ARLA FOOD trade mark by intentionally attempting to attract visitors to the its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website (see paragraph 4(b)(iv) of the Policy).

The Panel finds that these cumulative factors clearly demonstrate that the Respondent has registered and has used the disputed domain name in bad faith and that requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UKARLAFOODS.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2018-01-17

Publish the Decision