Decision for dispute CAC-UDRP-101843

Case number	CAC-UDRP-101843
Time of filing	2018-01-17 10:36:38
Domain names	ArlaAndMore.com

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Mic Yeh

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns several trademark registrations consisting of, or containing, the designation ARLA, among which the following:

- ARLA (word mark), international registration No. 731917, registered on 20 March 2000, covering goods in classes 1, 5, 29, 30, 31 and 32;
- ARLA (word mark), EUTM registration No. 1520899, registered on 24 February 2000, covering goods in classes 1, 5, 29, 30, 31 and 32;
- ARLA (figurative mark), EUTM registration No. 1902592, registered on 13 October 2000, covering goods in classes 1, 5, 29, 30, and 32;
- ARLA (word mark), US registration No. 3325019 registered on 20 October 2007, covering goods in classes 1 and 29;
- ARLA (figurative mark), EUTM registration No. 9012981, registered on 8 April 2010, covering goods in classes 1, 5, 29, 30, 31, and 32;
- ARLA FOODS (word mark), Danish registration No. VR 2000 01185, registered on 6 March 2000, covering goods in classes 1, 5, 29, 30, 31, and 32.

FACTUAL BACKGROUND

The Complainant is a Danish cooperative, owned by 12,650 dairy farmers in seven countries. The Complainant operates worldwide, including in Asia and specifically in China, where the Complainant promotes its activities through a Chinese website at www.arla.com.cn. The Complainant employs more than 19,000 employees and had a total turnover of 10,3 billion Euro in 2015.

The Complainant operates under the trademarks ARLA and ARLA FOODS and, in relation to a new project, has recently filed trademark applications in the US and in the EU for the trademark ARLA AND MORE. Both the ARLA and ARLA FOODS trademark registrations, and the ARLA AND MORE trademark applications, are dated before the date of registration of the disputed domain name, which occurred on 4 December 2017.

Previous Panelists in other UDRP proceedings held that the trademarks ARLA and ARLA FOODS enjoy reputation.

On 18 December 2017, the Complainant sent a cease and desist letter to the Respondent, pointing out the illegitimate use of the Complainant's trademarks and asking for the voluntary transfer of the disputed domain name. On 4 January 2018, the Complainant sent a reminder. The Respondent failed to reply to the Complainant's requests. On 18 December 2017, the Respondent changed his e-mail contact details.

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

I. CONFUSING SIMILARITY

According to the Panellist, the disputed domain name is confusingly similar to the Complainant’s registered trademark ARLA, since it fully incorporates this trademark followed by the descriptive English words “and more”, suggesting that a new service or activity is promoted on the relevant website.

Therefore the addition of the words “and more” in the disputed domain name, does not diminish the confusing similarity between the disputed domain name and the trademark ARLA, but rather enhances it: the disputed domain name is likely to pique the interest of the Internet users who are attracted by the contents of a new and promising Complainant’s website.

For these reasons, the Panellist concludes that the Complainant has successfully proved that the first condition under paragraph 4(a)(i) of the Policy.

II. RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS

Paragraph 4(c) of the Policy lists several circumstances, which if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name for the purposes of Paragraph 4(a)(ii) of the Policy. These circumstances, include the fact that the Respondent:

(i) before any notice of the dispute, uses, or makes demonstrable preparations to use, the disputed domain name, or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services; or

(ii) either as an individual, business, or other organization, has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the instant case, the Complainant has provided the results of a Google search showing that all results referring to the key words "ARLA" and "MORE" refer only to the Complainant and to its activities. The Google search did not disclose any hit showing that the Respondent is commonly known by the disputed domain name.

The disputed domain name resolves to a parking page where the disputed domain name is advertised at a sale price of 988 USD. The offering for sale of the disputed domain name incorporating a well-known trademark does not amount to a bona fide or legitimate and non-commercial use of the disputed domain name.

Moreover, the Respondent had the opportunity to object to the Complainant's requests, first by replying to the Complainant's cease and desist letter, and afterwards, by filing a Response within this UDRP proceeding. The Respondent has however preferred not to present his defensive arguments, most likely because he had no evidence supporting his rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. As the Respondent failed to rebut the Complainant's arguments, also the second condition under paragraph 4(a)(ii) of the Policy should be deemed as satisfied.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

Under Paragraph 4(a)(iii) of the Policy, in order to succeed in a UDRP proceeding it is necessary to prove both registration and use of the domain name in bad faith.

As far as registration in bad faith is concerned, it is clear that the Respondent was well aware of the Complainant’s well-known trademark at the time it sought registration of the disputed domain name. The Respondent registered a domain name, which fully includes the Complainant’s well-known trademark. Moreover, the Respondent registered a domain name identical to the recently applied for trademark ARLA AND MORE, that the Complainant filed in the US and the European Union. Although a trademark application is insufficient to establish trademark rights within the meaning of paragraph 4(a)(i) of the Policy, it may well serve as evidence to support registration and use of a domain name in bad faith. In the instant case, the fact that the disputed domain name is identical to a prior Complainant’s trademark application is a clear and irrefutable evidence of the fact that at the time of the registration of the disputed domain name the Respondent was very well aware of the Complainant’s trademarks and activities: considering the reputation and the distinctive character of the trademark ARLA, it is simply impossible that the Respondent registered the disputed domain name by mere coincidence. On the contrary, the Respondent was clearly targeting the Complainant and the Complainant’s trademarks at the time of the registration of the disputed domain name.

Concerning use in bad faith, the Panel notes that the disputed domain name is offered for sale at a price, which in the absence of any contrary evidence, should be considered in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. The unauthorized registration of a domain name corresponding to a third party's well-known trademark in order to profit from this registration, cannot amount to a use of the disputed domain name in good faith.

Furthermore, the Respondent has continued in behaving improperly notwithstanding the Complainant's cease and desist letter, pointing out the Complainant's conflicting earlier trademark rights, and asking for the voluntary transfer of the disputed domain name. Rather than complying with the Complainant's request, or challenging the Complainant's demand through convincing arguments, the Respondent ignored the Complainant's letter and changed his e-mail contact details. The modification of the Respondent's contact information pending a dispute on the registration and use of the disputed domain name is further evidence of bad faith.

The Panel therefore gathers that the Respondent registered and used the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or to any other interested third party, for valuable consideration in excess of the Respondent documented out-of-pocket costs directly related to the disputed domain name. In addition, any good faith use of the disputed domain name by the Respondent is inconceivable, since the Complainant never authorized said use, and since the Complainant's trademark ARLA should be considered well-known.

Accordingly, the Panel finds that the Complainant has successfully proved that the Respondent registered and is being using the disputed domain name in bad faith in accordance with 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. **ARLAANDMORE.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-02-26

Publish the Decision