Decision for dispute CAC-UDRP-102124

Case number	CAC-UDRP-102124
Time of filing	2018-08-07 11:48:16
Domain names	lacprodan.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	Arla Foods Ingredients Group P/S

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Kirill Danilin

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various "LACPRODAN" trademarks, including the European Union trademark registration no. 307397, registered on April 13, 1999, for various goods in international classes 01 and 29 (hereinafter the “trademark”).

The disputed domain name was registered on March 24, 2018, i.e. the Complainant’s trademark predates the registration of the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant is a leading whey ingredient supplier for infant nutrition, baking, dairy, medical applications and sports nutrition. “LACPRODAN” is the Complainant’s brand name for a stable whey protein isolate for acidic clear beverages.

The Complainant Arla Foods Ingredients Group P/S is a subsidiary of Arla Foods Amba (www.arla.com). Arla Foods Amba is a global dairy company and co-operative owned by 12,650 dairy farmers in seven countries. The company has operations worldwide, including in Russia, where it has offices in Saint Petersburg & Moscow. It targets its Russian customers through

the domain https://www.arla.ru/, a Russian language site. The company has over 19,000 employees worldwide

The Respondent registered the disputed domain name on March 24, 2018, using a privacy protection service. The Respondent's identity has only been revealed through the present proceeding under the UDRP Policy.

The Respondent has used the disputed domain name to attract internet users to a website where the Respondent not only used the Complainant's "LACPRODAN" trademark (in its Cyrillic form "Лакпродан") to advertise the sale of "Arla Lakprodan" products, but also prominently used the Complainant's "ARLA FOODS" name (in this form, i.e. not in Cyrillic) and the Complainant's "ARLA" company logo. The Complainant's company logo particularly appeared prominently on (i) the top left corner of the website's home page and (ii) various pictures of delivery trucks displayed on the website, thereby suggesting a close connection between the Complainant and the website. The website footer contained the copyright notice "© 2018 Arla Foods Lacprodan 80" (in this form, i.e. not in Cyrillic). The website did not contain any form of explanation regarding the relationship or association between the Respondent and the Complainant.

The Complainant is not aware of any connection between its "LACPRODAN" product and the Respondent.

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.

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".

The language of the Registration Agreement is Russian. The Complainant, however, has requested that the language of the proceeding be English instead of Russian.

The Panel uses its discretionary authority to decide that the language of the proceedings shall be English for the following reasons:

(a) The Respondent's website for which the Respondent has used the disputed domain name features several English language statements such as "Arla Foods Ingredients: Discovering the wonders of whey".

(b) The disputed domain name features the gTLD <.com>, which has a global connotation and stands for the English word "commerce". English being the main language of international business, it seems that the disputed domain name was intended to reach not only a Russian-speaking public (for which a domain name under the Russian top-level domains ".ru" or

the Cyrillic “.рф” would have been more appropriate).

(c) The Complainant has submitted its Complaint and supporting evidence in English. If the Complainant were required to submit all documents in Russian, the administrative proceeding would be unduly delayed and the Complainant would have to incur substantial expenses for translation.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is identical to the Complainant’s protected brand name “LACPRODAN” (within the meaning of paragraph 4(a)(i) of the Policy).

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain names, nor is the Respondent commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent.

It is possible that resellers, distributors, or service providers use domain names like the disputed domain name for a bona fide offering of goods and services (within the meaning of paragraph 4(c)(i) of the Policy), and thus have a legitimate interest in such domain name. According to the well-established “Oki Data test” (cf. Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com>; please see section 2.8 of the WIPO Jurisprudential Overview 3.0 for more details), however, the following cumulative requirements must be met in such cases:

(i) the Respondent must actually be offering the goods or services at issue;
(ii) the Respondent must use the site to sell only the trademarked goods or services;
(iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
(iv) the Respondent must not try to “corner the market” in domain names that reflect the trademark.

The Respondent does not meet requirement (iii) and therefore fails the Oki Data test.

Given the Respondent’s prominent use of the Complainant’s “ARLA“ name and logo on the website it is evident that the Respondent had the Complainant's trademark in mind when registering the disputed domain name. In the absence of a Response, the Panel infers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of this website and the Respondent’s services offered on it (within the meaning of paragraph 4(b)(iv) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LACPRODAN.COM**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2018-09-17

Publish the Decision