Decision for dispute CAC-UDRP-102932

Case number	CAC-UDRP-102932
Time of filing	2020-02-21 11:08:02
Domain names	arllafoods.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Bruce C. Whitehurst, Xray Eye & Vision Clinics

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of multiple trademarks, including the international trademark ARLA, with registration number 731917 and registration date 20 March 2000.

FACTUAL BACKGROUND

According to the information provided Complainant is a globally well-known company cooperatively owned by 9,900 farmers, producing and commercializing dairy products. Complainant is the fourth largest dairy company in the world, based on milk intake and the world's largest organic dairy producer. Complainant employs over 19.000 people across 105 countries. Complainant also owns numerous domain names containing the trademark ARLA, among them: <arla.com>, <arla.eu>, <arlafoods.com>, <arlafoods.co.uk> and <arlafoods.ca>. Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its ARLA mark and its products and services.

The disputed domain name <arllafoods.com> was registered on 28 January 2020.
The trademark registrations of Complainant have been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is confusingly similar to Complainant's trademarks as it contains the trademark ARLA in its entirety. According to Complainant it is a typosquatting situation: Complainant’s trademarks have been misspelled in the disputed domain name with two letters “l” in order to capitalized on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, Complainant on the Internet.

According to Complainant Respondent has no rights or legitimate interest in the disputed domain name. Respondent is not related in any way with the business of Complainant. According to the submission and evidence provided by Complainant the disputed domain name is used for fraudulent phishing purposes. Respondent created an email address including the disputed domain name, “ar.int@arllafoods.com”, and used it for fraudulent purposes. Respondent interfered in email correspondence between Complainant and one of its customers. Respondent intercepted an email sent by one of Complainant’s accountant employees requesting the customer to pay an invoice. By using the first name of Complainant’s employee and mimicking Complainant’s official email address “ar.int@arlafoods.com”, Respondent deceived the customer and provided bank details different from Complainant’s bank details in order to receive payment of an invoice. A few days later, Complainant and its customer realized that they were facing a fraud.
Complainant also submits that the disputed domain name has not been resolving to any active web page. It shows that the disputed domain name has not been used for any other purpose than to perpetrate a phishing scheme.

According to Complainant the disputed domain name is registered in bad faith. Given the distinctiveness of Complainant's trademark, it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of Complainant's trademark. Further, Respondent uses the disputed domain name in connection with a fraudulent phishing scheme. Complainant submits that Respondent managed to interfere in a correspondence between Complainant and its customer and used the identity of one of Complainant’s employees in order to intercept an invoice payment. The fraudulent emails were sent on 29 January 2020. Thus, the fraud happened within a very short period of time: the day after the disputed domain name was registered. These facts clearly demonstrate that Respondent did not act randomly but knew Complainant and its trademark when it undertook such fraudulent maneuver.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark (Policy, Par. 4 (a) (i)). Many UDRP decisions have found that a domain name is confusingly similar to a complainant’s trademark where the

domain name incorporates the complainant's trademark or the principal part thereof in its entirety. The disputed domain name contains the trademark ARLA in its entirety. The top-level domain "com", the addition of the descriptive term "foods" and the addition of the second letter "l" in the disputed domain name may be disregarded.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not 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 trademarks of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent.
In particular the Panel takes into account the undisputed submission of Complainant, supported by evidence, that the disputed domain name is used for fraudulent phishing purposes. It appears that Respondent, in a fraudulent scheme impersonating an employee of Complainant, used the disputed domain name to send an email to a customer of Complainant effectively trying to encourage such customer to transfer money to Respondent.
Respondent did not submit any response. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name (Policy, Par. 4 (a)(ii)).

The Panel finds that the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(a)(iii)). The trademark of Complainant has been existing for a long time and is well-known. Respondent knew or should have known that the disputed domain name included Complainant's trademark.
The Panel also notes the fraudulent use of the disputed domain name as mentioned above.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLLAFOODS.COM**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2020-03-30

Publish the Decision