Decision for dispute CAC-UDRP-103066

Case number	**CAC-UDRP-103066**
Time of filing	**2020-05-18 14:44:14**
Domain names	**arlafoobs.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BRANDIT GmbH**

Respondent

Name	**Sonia Rubio**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant Arla Foods Amba is a globally well-known company.

The Complainant owns numerous trademark registrations for ARLA and ARLA FOODS (thereafter the “Complainant’s trademarks”), such as but not limited to:

- Canadian trademark registration No. 1049852 ARLA registered on June 3, 2003;
- Canadian TM registration ARLA (logo) No. 1410246 registered on August 23, 2010;
- International trademark ARLA No. 731917, registered on March 20, 2000;
- International trademark ARLA No. 990596, registered on September 8, 2008;
- Denmark trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000.

The trademarks of the Complainant ARLA and ARLA FOODS are considered as well-known trademarks, see for example: Arla Foods Amba v. Nashan, CAC Case No. 101486.

The Complainant also owns numerous domain names containing the trademark ARLA, among them: <arla.com> (registered

on July 15, 1996), <arlafoods.eu> (registered on April 23, 2006), <arlafoods.com> (registered on October 1, 1999), <arlafoods.co.uk> (registered on October 1, 1999), <arlafoods.ca> (registered on November 29, 2000), <arlafoods.us> (registered on April 29, 2002). The 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 <ARLAFOOBS.COM>

FACTUAL BACKGROUND

The Complainant Arla Foods Amba is cooperatively owned by 9,759 farmers, producing and commercializing dairy products. Arla Foods Amba was constituted in 2000, when the largest Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. Arla Foods is the fourth largest dairy company in the world, based on milk intake and the world's largest organic dairy producer; it sells its products in 151 countries. Arla Foods Amba employs around 19,190 people across 105 countries in 2018 and after its Consolidated Annual Report 2018 reached a global revenue of EUR 10,5 billion for the year 2019.

The Complainant Arla Foods Amba has a strong and established presence in Canada dairy market; 3.1 volume growth in Canada in 2019 compared to 2018. Arla Foods has office in Canada and operates the Canadian web-site <arlafoods.ca> to connect and promote their products among customers.

The Complainant´s products are easily recognized by the consumers all over the world due to the significant investments of the company in promoting its products and brands and offering high quality products. It sells its milk-based products under its famous brands ARLA®, LURPAK®, CASTELLO®, APETINA® and others.

The Complainant also enjoys a strong online presence via its official website and social media. Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world.

The Complainant is present in the USA via its registered companies (including ARLA FOODS, INC. incorporated in 1970, and runs a US related web-site <arlausa.com>. The history of the Complainant in USA goes back to 1998 and now the plant (Wisconsin Hollandtown dairy) employs over 150 people. The Complainant is very active on social media to promote its mark, products and services. The Complainant is followed by 1,195,982 people on Facebook, the US account of the Complainant on Instagram followed by 2,677 followers, Twitter accounts are also popular among consumers.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed allegations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules because of the Respondent's failure to submit a response.

Therefore, in the absence of a response, it is appropriate to accept as true all allegations of the Complaint.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b)(iv) of the Policy reads: “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Complainant proved that it is the owner of numerous trademark registrations for ARLA and ARLA FOODS such as Canadian trademark registration No. 1049852 ARLA (since June 2003), Canadian trademark registration ARLA (logo) No. 1410246 (since August 2010), international trademark ARLA No. 731917 (since March 2000), international trademark ARLA No. 990596 (since September 2008) and Denmark trademark ARLA FOODS No. VR 2000 01185 (since March 2000) among others.

The Complainant also owns numerous domain names containing the trademark ARLA, among them: <arla.com> (registered on July 15, 1996), <arlafoods.eu> (registered on April 23, 2006), <arlafoods.com> (registered on October 1, 1999), <arlafoods.co.uk> (registered on October 1, 1999), <arlafoods.ca> (registered on November 29, 2000), <arlafoods.us> (registered on April 29, 2002). The Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its ARLA trademark and its products and services.

This sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the trademarks ARLA and ARLA FOODS. All the Complainant’s trademarks above are distinctiveness and well-known trademarks (see also for instance CAC Case No. 101486, Arla Foods Amba v. Nashan).

The Disputed Domain Name <arlafoobs.com> was registered in 2019.

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant owns numerous trademarks for ARLA and trademark ARLA FOODS registered many years before the Disputed Domain Name <arlafoobs.com> was created in November 2019.

The Disputed Domain Name incorporates, in its second-level portion, Complainant's trademark ARLA in its entirety and a misspelled form of the Complainant's trademark ARLA FOODS as well as Complainant's trade name Arla Foods Amba. The ARLA trademark is incorporated entirely and ARLA FOODS trademarks spelled with the letter "b" instead of the letter "d" in the term "foods" in the Disputed Domain Name.

It is a typosquatting whereas the Complainant's trademarks are misspelled on purpose in the Disputed Domain Name in order to capitalize on errors made by Internet users (in typing or reading) searching for, or trying to communicate with, the Complainant on Internet. The ARLA and ARLA FOODS trademarks are clearly recognizable in the Disputed Domain Name. The Domain Name <arlafoobs.com> is virtually identical to Complainant's ARLA FOODS trademark, differing only by the mere substitution of the letter "d" for the letter "b". Because Respondent has committed typosquatting, the Disputed Domain Name is confusingly similar to Complainant's ARLA and ARLA FOODS trademarks.

The generic Top-Level Domain ".com" in the second-level portion is a standard registration requirement and should be disregarded when assessing whether a disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see for instance CAC Case No. 102345, Arcelormittal S.A v. James, supra and Credit Mutuel Arkea v. Domain Administration).

Thus, the Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is 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).

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, a Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the Disputed Domain Name. The Complainant has not licensed or authorized the Respondent to register or use the Disputed Domain Name. There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademarks including the terms "arlafoobs.com". When conducting the search regarding the term "arlafoobs.com" on popular Internet search engines such as "Google.com" and "Yahoo.com", the vast majority of the results relate to the Complainant and its official websites such as <arla.com>, <arlafoods.com>, <arlafoods.co.uk>, <arlafoodforhealth.com>, <arlafoodsingredients.com>, <arlausa.com> and other. Moreover, when conducting a search associating with the Disputed Domain Name and the Respondent's name (Sonia Rubio) on popular Internet search engine, no relevant results showing that the Respondent would be commonly known by the Disputed Domain Name were found.

When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms "arlafoobs.com", "arlafoobs" or "arla foobs" (the latter results in showing trademarks of the Complainant) nor any trademarks found in the name of the Respondent. The Disputed Domain Name has not been resolving to any active web page. Therefore where there is no evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name. The Disputed Domain Name has therefore not been used in connection with a bona fide offering of goods and services.

It was established that the Complainant sent a cease and desist letter to the Respondent on December 4, 2019 at the e-mail address indicated in publicly available WHOIS records at the time of sending <nl3gndrard6w@contactprivacy.email> and received in response automatic message that "If you are trying to reach the owner (registrant) of a domain name that is protected by the Contact Privacy WHOIS Privacy Service operated by Contact Privacy, please follow the instructions you will

find on http://contactprivacy.email" and when after filled in the on-line form no response was received. The Complainant has further sent reminder on December 20, 2019 putting in copy the abuse contact of the Registrar <registrar-abuse@google.com>. On December 21, 2019 an automated response from Registrar was received stating the report will be processed in accordance with Google Policy and that Registrar does not participate in trademark disputes.

The Respondent did not prove neither that it is affiliated with or authorized by the Complainant in any way or does have any license or authorization which have been granted to it to make any use of the Complainant's ARLA and ARLA FOODS trademarks, or that the Respondent applied for registration of the Disputed Domain Nameby the Complainant. Thus, the Panel believes in the Complainant that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Nameand that the Complainant does not carry out any activity for, nor has any business with the Respondent

Thus, 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).

iii) The Disputed Domain Name was registered and is being used in bad faith;

1) Registration of the Disputed Domain Name in bad faith

The Respondent registered the Disputed Domain Name many years after the first registrations of the Complainant's ARLA and ARLA FOODS trademarks. The ARLA trademark is widely known trademark, as registered in many countries including in US where the Respondent is located.

By conducting an online search regarding the terms "arla", "arla foobs", "arla foods" and "arlafoobs.com", the Respondent would have inevitably learnt about the Complainant, its trademarks and business (see for instance CAC Case No. 102396, Intesa Sanpaolo S.p.A. v. Abayomi Ajileye). Moreover, as stated above, when searching for the term "arlafoobs.com" online, the vast majority of the results relates to the Complainant's domain names, incorporating in their second-level portion the terms "arlafoods", and the official websites of the Complainant associated to them.

Moreover, as stated above, the Disputed Domain Name incorporates in its entirety Complainant's trademark ARLA and misspelled version of the Complainant's ARLA FOODS trademark by substituting the letter "d" with the letter "b". The inclusion of the ARLA mark with misspelled version of the term "foods" closely connected to the Complainant's business and inclusion of misspelled version of ARLA FOODS trademark in the Disputed Domain Name is a direct reference to the Complainant, their business and trademarks. Therefore, it is self-evident that the Respondent registered the Disputed Domain Name having the Complainant in mind. By registering the Disputed Domain Name which is very similar in its structure to the Complainant's domain names incorporating the expression "arlafoods", the Respondent's intent was to mimic the Complainant's official domain names. It is inconceivable that the Respondent was unaware of the existence of the Complainant when she registered the Disputed Domain Name.

Therefore, the Respondent knew the Complainant's trademark at the time it registered the Disputed Domain Name and registered the Disputed Domain Name in bad faith.

2) Use of the Domain Name in bad faith

Firstly, the Disputed Domain Name incorporates in its entirety the Complainant's well-known trademark ARLA as well as typo of the trademark ARLA FOODS and trade name of the Complainant. The inclusion of the ARLA mark with misspelled version of the term "foods" ("foobs") closely connected to the Complainant's business and inclusion of misspelled version of ARLA FOODS trademark in the Disputed Domain Name is a direct reference to the Complainant, their business and trademarks. By registering the Disputed Domain Name which is very similar in its structure to the Complainant's domain names incorporating the expression "arlafoods", the Respondent's intent was to mimic the Complainant's official domain names.

WIPO Overview 3.0 para. 3.1.4 states that "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive

term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Secondly, as stated previously, the Disputed Domain Name currently does not resolve to an active website. It is provided in WIPO Overview 3.0 para 3.3 that "from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding".

Thirdly, the Complainant tried to contact the Respondent on December 4, 2019 through a cease-and-desist letter. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of their trademarks within the Disputed Domain Name violated their trademark rights and the Complainant requested a voluntary transfer of the Disputed Domain Name. Further reminder was sent on December 20, 2019. The Respondent chose not to reply to the cease and desist letters sent by the Complainant which infers bad faith.

Furthermore, as the WHOIS associated with the Disputed Domain Name <arlafoobs.com> shows a Privacy shield by hiding the registrant's identity and contact details. It is very likely that the Respondent is trying to conceal its identity which is further evidence of bad faith (see for instance CAC Case No. 101962, Avast Software s.r.o. v. Victor Chernyshov).

Thus, 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAFOOBS.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2020-06-22

Publish the Decision