Decision for dispute CAC-UDRP-103062

Case number	**CAC-UDRP-103062**
Time of filing	**2020-05-14 13:12:50**
Domain names	**arlafoodz.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BRANDIT GmbH**

Respondent

Name	**Lewis Bertrand Antoin**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

- 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.

FACTUAL BACKGROUND

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

IV. Language of Proceedings

According to the Registrar Verification dated May 13, 2020, the language of the Registration Agreement is English. The language of the proceeding should therefore be English.

In accordance with Paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise, exercising its “discretion in the spirit of fairness to both parties, which pursuant to paragraph 10(b) of the Rules have to be treated with

equality, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs" (see Carrefour v. Contact Privacy Inc. Customer 1242379769 / Le Berre, WIPO Case No. D2018-1552).

Should the Respondent request the language of the Registration Agreement be different from English, the Complainant hereby requests that the language of the present administrative proceeding be English based on the following reasons:

- the Respondent is located in US where English is the official language;
- the Disputed Domain Name incorporates, in its first level portion, in its entirety the Complainant's ARLA trademark with the term "foodz" voluntarily misspelled by adding letter "z" instead of "s" which is a common colloquial substitution used in English language. It is also a typo squatting of the Complainant's trademark ARLA FOODS. Using suchs term in the first level portion of the domain name shows that the Respondent understands English and has intended, by registering such domain name, to target English speaking Internet users;
- the Complainant is a global company, originally founded in Denmark, having its website at "arla.com" displayed in the English language, and it appears that the Respondent is located in US. The English language, being commonly use internationally, would be considered as neutral for both parties in the present case. It would therefore be fair to the Parties that the language of the present proceeding be English (See Intesa Sanpaolo S.p.A. v. Ida Ekkert, CAC Case No. 102263)
- Moreover, should the language of the Registration Agreement be different from English, a translation of the Complaint in such a language would entail significant additional costs for the Complainant and delay in the proceedings.

The Complainant therefore requests the Panel to exercise its discretion and allow the language of the proceeding to be English.

V. Factual and Legal Grounds

A. Factual background

Arla Foods Amba is a globally well-known company cooperatively owned by 9,759 farmers, producing and commercializing dairy products (Annex 3-1). Arla Foods Amba was constituted 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 (2018) and reached a global revenue of EUR 10,5 billion for the year 2019.

Arla Foods Amba has a strong and established presence in the US dairy market and the revenue in US market was EUR 254 million (14 % of total revenue).Arla Foods has office in the US in New Jersey and is actively present at the market.

Arla Food'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 medias. Due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown around the world.

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

- International trademark ARLA No. 731917, registered on March 20, 2000, designating US;
- International trademark ARLA No. 990596, registered on September 8, 2008 designating US;
- Denmark trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000.

It has been established in previous WIPO decisions that ARLA is considered a well-known trademark, see for example: Arla Foods Amba v. Graytech Hosting Pty Ltd. ABN 49106229476, Elizabeth Rose WIPO Case No. DAU2016-0001; Arla Foods Amba v. Fredrik Enghall, WIPO Case No. D2016-1205; Arla Foods Amba v. Nashan, CAC Case No. 101486; Arla Foods amba v. Bel Arbor / Domain Admin, PrivacyProtect.org, WIPO Case No. D2012-0875.

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) (Annex 6). 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.

B. Legal grounds

In accordance with Paragraph 4(a)(i) of the Uniform Dispute Resolution Policy (the "Policy"), in an administrative proceeding the complainant must prove that (i) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no right or legitimate interests in respect of the Domain Name, and (iii) the Domain Name has been registered and is being used in bad faith.

(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 <arlafoodz.com> was created (on November 5, 2019).

The 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.

Namely, the Disputed Domain Name incorporates:

- ARLA trademark is incorporated in its entirety along with the descriptive term "foods" misspelled by substitution of letter "s" with letter "z" which is closely connected to the Complainant's business being one of the biggest producers of dairy products globally. Previously, Panels stated: "This Panel finds that <ansellcondoms.com> is confusingly similar to the trademark "ANSELL". The addition of the generic name "condoms" does not avoid confusion. In fact, since the term describes the Complainant's products, the addition of "condoms" is more likely to increase confusion". See Ansell Healthcare Products Inc. v Australian Therapeutics Supplies Pty, Ltd. WIPO Case No. D2001-0110;
- ARLA FOODS trademark which spelled with the letter "z" instead of the letter "s" in the term "foods" in the Disputed Domain Name. It is a typosquatting situation: the Complainant's trademarks have been misspelled on purpose in the Disputed Domain Name in order to capitalize on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, the Complainant on Internet. Substituting the letter "z" with the letter "s" is a common colloquial substitution used in English language.

The ARLA and ARLA FOODS trademarks are clearly recognizable in the Disputed Domain Name. Previous UDRP Panels have stated in this regard that "minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name" (see LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679).

Furthermore, previous Panels have stated the following: "Panel finds Respondent has engaged in typosquatting by registering the Domain Name <ranstadjobs.org>, a practice by which a registrant deliberately introduces slight deviations into well-known marks for commercial gain. See, e.g., Marriott International, Inc. v. Seocho, NAF Claim No. 149187 (finding <marriottt.com> confusingly similar to <marriott.com>). The Domain Name <ranstadjobs.org> is virtually identical to Complainant's RANDSTAD Mark, differing only by the elimination of the letter "d" after "ran". Because Respondent has

committed typosquatting, the Domain Name is, by definition, confusingly similar to Complainant's RANDSTAD Mark. See Edmunds.com, Inc v. Triple E Holdings Limited, WIPO Case No. D2006-1095.

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, Arcelormittal S.A v. James, supra and Credit Mutuel Arkea v. Domain Administration, CAC Case No. 102345).

The Disputed Domain Name is therefore confusingly similar to the Complainant's trademarks ARLA and ARLA FOODS.

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

The Disputed Domain Name was registered on November 5, 2019, many years after the first registrations of the Complainant's ARLA trademarks and ARLA FOODS trademark.

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 "arlafoodz.com".

When conducting the search regarding the term "arlafoodz.com" on popular Internet search engines such as "Google.com" and "Yahoo.com", the vast majority of the results relate to the Complainant's 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 on popular Internet search engines, no relevant results showing that the Respondent would be commonly known by the Disputed Domaine Name were found.

When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms "arlafoodz.com", "arllafoodz" or "arla foodz". Moreover, according to the same online trademark databases, no trademarks having the Respondent as trademark owner are found in relation to the term "arlafoodz.com", "arlafoodz" or "arla foodz" or any other trademarks.

The Disputed Domain Name has not been resolving to any active web page and shows "account suspended", earlier in December 2019 the Dispute Domain name resolved to inactive page. 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" (see Bollore v. Tywonia W Hill, WIPO Case No. DCO2017-0012). The Disputed Domain Name has therefore not been used in connection with a bona fide offering of goods and services.

The Complainant sent a cease and desist letter to the Respondent on December 4, 2019 at the e-mail address available in the WHOIS records <whois@hostmonster.com>, the Complainant has further sent 3 reminders on December 17, 2019, December 20, 2019 and February 19, 2020 also putting in cc <support@hostmonster.com> as indicated in the WHOIS records. The Respondent has been granted several opportunities to present some compelling arguments that they had rights or legitimate interests in the Disputed Domain Name but has failed to do so. This behaviour coupled with the absence of use of the Domain Name in connection with a bona fide offering of goods and services further demonstrates the Respondent's absence of rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent has therefore no rights or legitimate interests in respect of the Disputed Domain Name.

(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 trademarks are widely known trademarks, as previously held by UDRP Panels, registered in many countries – including in US where the Respondent is located.

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 Complainant on Instagram followed by 2,677 followers, Twitter accounts are also popular among consumers. (See, Laboratoires M&L v. Zhaoxingming, CAC Case No. 102277).

By conducting a simple online search regarding the terms "arla", "arla foods" and "arlafoodz.com", the Respondent would have inevitably learnt about the Complainant, its trademarks and business (see Intesa Sanpaolo S.p.A. v. Abayomi Ajileye, CAC Case No. 102396). Moreover, as stated above, when searching for the term "arlafoodz.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 associated to them.

Moreover, 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 "s" with the letter "z". 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. 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 therefore inconceivable that the Respondent was unaware of the existence of the Complainant when he registered the Disputed Domain Name.

Previously panels have stated: There can be no doubt that the Respondent registered the disputed domain name and is using it to attract, for commercial gain, Internet users to its website. The evidence also establishes the Respondent must have been aware of the Complainant's rights at the time of registration; indeed, those rights are the reason for having chosen the disputed domain name for typosquatting purposes. Such conduct qualifies as "bad faith" within the meaning of paragraph 4(b)(iv) of the Policy. (See Accenture Global services Limited v. Vistaprint Tenchologies Ltd, WIPO Case No. D2015-1922).
Therefore, the Respondent knew the Complainant's trademark at the time it registered the Domain Name and registered the Domain Name in bad faith.

2) Use of the Domain Name 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. Among those circumstances 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."

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" 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 noted 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”.

Previously panels stated the following: “The Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly refers to the Complainant's trademark may constitute registration and use in bad faith (see Telstra Corporation Limited v. Nuclear Marshmellows, WIPO Case No. D2000-0003)

Thirdly, the Complainant tried to contact the Respondent on December 5, 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. Three reminders were sent further. The Respondent chose not to reply to the cease and desist letters sent by the Complainant which infers bad faith (see International Business Machines Corporation v. Adam Stevenson, Global Domain Services, WIPO case No. D2016-1695; Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo, WIPO Case No. D2018-2201).

Furthermore, by making Reverse WHOIS search corresponding to the e-mail address of the Respondent <CONNIE@EXITSPEARFISH.COM> it is evident that Respondent has engaged in a pattern of trademark-abusive domain name registrations. The results show 29 domain names associated with the e-mail of the Respondent all registered with the same Registrar FastDomain Inc., among the domain names clear misspelling versions of other known brands and trademarks are identified, for example: <tripadvisoer.com> misspelling version of known official web-site tripadvisor.com and trademark Tripadvisor®, or <samsun-g.com> misspelling version of well-know brand Samsung® and the official web-site samsung.com.

In view of the above, the Complainant registered and used the Disputed Domain Name in bad faith and its conduct falls within the meaning of Paragraph 4(a)(iii) of the Policy.

SUMMARY

In conclusion, Arla Foods Amba is a well-known dairy producer and owns the widely-know trademark ARLA and the trademark ARLA FOOD which were registered before the Disputed Domain Name.

(i) The Disputed Domain Name contains the well-known trademark ARLA in its entirety. Moreover, a misspelled version of the Complainant’s trademark and trade name ARLA FOODS is reflected in the second-level portion of the Disputed Domain Name with substation of the letter “s” in the word “foods” by the letter “z” which does not dispel the confusing similarity of the Disputed Domain Name to the Complainant’s trademark. The Disputed Domain Name is therefore confusingly similar to the Complainant’s trademarks ARLA and ARLA FOOD.
(ii) The Respondent bears no relationship to the Complainant or its ARLA and ARLA FOODS trademark and is not commonly known by the Disputed Domain Name;
(iii) The Disputed Domain Name does not resolve to an active web page. The Respondent is therefore not making any legitimate noncommercial or fair use of the Disputed Domain Name;
(iv) The Respondent knew the Complainant’s widely known trademark when registered the Disputed Domain Name. The structure of Disputed Domain Name – including the term “foodz”- typo version of “foods” which relates to the Complainant’s business, trade name and trademarks and being similar to the Complainant’s preexisting official websites –demonstrates that the Respondent was aware of the Complainant when registered the Disputed Domain Name. The Domain Name clearly refers to the Complainant and their trademarks and is passively held which constitutes bad faith;
(v) The Respondent has engaged in a pattern of trademark-abusive domain name registrations.

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

FIRST CONDITION

It is commonly accepted that the first condition functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. It this comparison, the cc- or g- TLD is usually not taken into account.

The Domain Name includes entirely the Complainant's trademark with the exception of one letter : letter "z" instead of letter "s" in the term "foods".

This slight difference is not enough to exclude confusing similarity; first condition is satisfied.

SECOND CONDITION

Panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

Complainants claims, without being contradicted, that:

- 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 "arlafoodz.com".

- When conducting the search regarding the term "arlafoodz.com" on popular Internet search engines such as "Google.com" and "Yahoo.com", the vast majority of the results relate to the Complainant's official websites.

- The Disputed Domain Name has not been resolving to any active web page and shows “account suspended” : 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 Respondent has chosen not to answer to the Complaint.

Based on the elements presented by Complainant, the Panels finds that the second condition is satisfied.

THIRD CONDITION

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 “s” with the letter “z”.

In the absence of any credible explanation, such substitution appears a direct reference to the Complainant’s trademark ARLA FOODS. It is highly probable that the Respondent registered and used the Disputed Domain Name having the Complainant in mind.

Based on the elements presented by Complainant, the Panels finds that the third condition is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAFOODZ.COM**: Transferred

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2020-06-23

Publish the Decision