Decision for dispute CAC-UDRP-103499

Case number	CAC-UDRP-103499
Time of filing	2021-01-18 14:12:05
Domain names	arrlafoods.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	NGU

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns numerous trademark registrations for ARLA, such as:

International trademark ARLA No. 731917, registered on March 20, 2000 designating US;

International trademark ARLA No. 990596, registered on September 8, 2008 designating US;

International trademark ARLA NATURA No. 1172732, registered May 3, 2013;

International trademark BUKO No. 794425, registered on December 12, 2002, designating US; and

Denmark trademark ARLA FOOD No. VR 2000 01185, registered on March 6, 2000.

The Complainant also owns numerous domain names containing the trademark ARLA, among them: <arla.com> (registered on July 15, 1996), <arla.eu> (registered on June 1, 2006), <arlafoods.com>, <arlafoods.co.uk> (registered on October 1,

1999) and <arlafoods.ca> (registered on November 29, 2000).

FACTUAL BACKGROUND

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

The Complainant is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. 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 Amba employs 119,190 people across 105 countries and reached a global revenue of EUR 10,5 million for the year 2019.

Arla Foods Amba has a strong and established presence in US dairy market. The Complainant has offices in US, Arla Foods Inc, USA (New Jersey) and operates via its US dedicated website <arlausa.com>.

Complainants products are easily recognized by the consumers all over the world due to the significant investments of the Complainant in promoting its products and brands and offering high quality products. It sells its milk-based products under its 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, the Complainant enjoys a high degree of renown around the world.

The Complainant owns numerous trademark registrations for ARLA and also numerous domain names containing the trademark ARLA. 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 Complainant owns numerous ARLA trademarks registered many years before the disputed domain name <arrlafoods.com> was created (on January 12, 2021).

The domain name incorporates, in its second-level portion, a misspelled form of the Complainant’s trademarks ARLA and ARLA FOODS.

The ARLA and ARLA FOODS trademarks are spelled with two letters “r” instead of one in the disputed domain name, which in the view of the Complainant is a typosquatting situation: the Complainant’s trademarks have been misspelled on purpose in the domain name in order to capitalized on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, the Complainant on Internet. It confirms in the view of Complainant that the term «arrla» is an intended misspelled version of the ARLA and ARLA FOODS trademarks. The ARLA and ARLA FOODS trademarks are clearly recognizable in the disputed domain name.

Furthermore, the Complainant states, that 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.

The disputed domain name is therefore in the view of the Complainant confusingly similar to the Complainant’s trademarks ARLA and ARLA FOODS.

The disputed domain name was registered on January 12, 2021, many years after the first registrations of the Complainant’s ARLA trademarks.

The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent's website.

The Complainant further states, that there is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademark including the terms “arrlafoods.com”.

When conducting the search regarding the term “arrlafoods.com” on popular Internet search engines such as <Google.com>, <Bing.com> and <Yahoo.com>, the vast majority of the results relate to the Complainant’s official websites and also third parties’ websites – directly referring to the Complainant’s products sold under the ARLA trademark and to many of the Complainant’s websites associated with the domain names incorporating the terms “arlafoods” such as <arlafoods.com>, <arlafoods.ca> and <arlafoods.co.uk>.

The disputed domain name via the e-mail function has been used in order to conduct email phishing scheme. The Respondent created an email address associated to the disputed domain name, “ap-uk@arrlafoods.com”, and used it for fraudulent purposes. Namely, on January 12, 2021 an e-mail impersonating Complainant's UK payments department with genuine e-mail address ap-uk@arlafoods.com was sent to one of the Complainant’s customer from the e-mail address ap-uk@arrlafoods.com as created from the disputed domain name and signed off with the name of the officer of the Complainant. The e-mail was informing customer on “change of bank details” which were attached to the e-mail and asking the customer to change the records and direct all future payments to the new bank details provided in attachment to the e-mail. The Respondent copied another impersonating e-mail address’s created from the disputed domain name (e.g <mamae@arrlafoods.com; ar.mmt@arrlafoods.com; adst@arrlafoods.com>) in order to deceive the recipients by giving the overall impression that the e-mail is genuinely coming from the Complainant.

The Complainant and its customer realized that they were facing a fraud. In order to prevent such very harmful phishing scheme to spread and continue, the Complainant filed a takedown action before the Registrar on January 13, 2021.

Furthermore, it appears that the disputed domain name has not been resolving to any active web 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.

The Complainant contents, that it shows that the disputed domain name has not been used for any other purposes and ways than to perpetrate a phishing scheme. The disputed domain name has therefore not been used in any ways in connection with a bona fide offering of goods and services.

The use of the disputed domain name to perpetrate an illegal activity characterized in the view of the Complainant bad faith and, as previously held by UDRP Panelists in similar circumstances, “can never confer rights or legitimate interests on a respondent”.

The Complainant states that the Respondent registered the disputed domain name many years after the first registrations of the Complainant’s ARLA trademarks. The ARLA trademark is a widely known trademark, as previously held by UDRP Panels and the Complainant enjoys a strong online presence. The Complainant is also very active on social media (Facebook and Twitter) to promote its mark, products and services. The Complainant is followed by 1,192,118 people on Facebook and 1,762 people on Twitter.

By conducting a simple online search regarding the terms “arrlafoods.com” and “arrlafoods”, the Respondent would have inevitably learnt about the Complainant, its trademark and business.

Further, the disputed domain name incorporates a misspelled version of the Complainant’s ARLA trademark, adding an extra letter “r” to the ARLA trademark. The intent of the Respondent was in the view of the Complainant to capitalize on the customer's error to perpetrate fraudulent act. This fact shows that the Respondent had the Complainant and its trademark in mind at the time it registered the disputed domain name.

Furthermore, the inclusion of the term “foods” in the disputed domain name is a direct reference to the Complainant’s trademark ARLA FOOD but also to the Complainant’s business - one of the biggest European dairy producers and fifth largest in the world. It is very likely that the Respondent have 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 typo of the expression "arlafoods", the Respondent's intent was in the view of Complainant to mimic the Complainant's official domain names.

Finally, the Respondent initiated correspondence by using the identity of one of the Complainant's employee in order to deceive Complainant's customer and provide them with the false bank details. The fraudulent email was sent on January 13, 2021. Thus, the fraud happened the day after the disputed domain name was registered. These facts clearly demonstrate that the Respondent did not act randomly but knew the Complainant and its trademark when it undertook such fraudulent maneuver.

It is therefore in the view of the Complainant inconceivable that the Respondent was unaware of the existence of the Complainant when he registered the disputed domain name.

Therefore, in the view of Complainant 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.

The Complainant states that the disputed domain name has been used in order to conduct email phishing scheme. The Respondent created an email address associated to the disputed domain name, "ap-uk@arrlafoods.com", and used it for fraudulent purposes. Namely, on January 12, 2021 an e-mail impersonating Complainant's payments department was sent to one of the Complainant's customer. The e-mail was informing the customer on "change of bank details" which were attached to the e-mail and asking the customer to change the records and direct all future payments to the new bank details provided. The disputed domain name has been used to undertake fraudulent activities. Moreover, by such maneuver the Respondent created in the view of Complainant a likelihood of confusion with the Complainant's mark as to the source of the email address used to perpetrate such fraudulent acts, with the intent of making an undue commercial gain. Such conduct is clearly in bad faith and is very harmful for the Complainant.

Therefore the Complainant states that the Respondent 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.

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

A. Identical or Confusingly Similar

The Complainant has rights in the mark by virtue of its registered mark ARLA.

The disputed domain name incorporates the whole of the Complainant’s ARLA mark, and adds the generic word “foods" and the letter "r" and the gTLD suffix “.com". Whilst the addition of the letter “r” is enough to preclude the disputed domain name from being identical to the Complainant’s registered mark, it does not help to escape the conclusion that the disputed domain name is confusingly similar to the "ARLA" mark, and the Panel accepts the Complainant’s submissions in so finding.

The disputed domain name is therefore confusingly similar to the Complainant’s trademarks ARLA and ARLA FOOD;

B. Rights or Legitimate Interests

The Respondent has no relationship whatsoever with the Complainant or its ARLA trademark and is not commonly known by the disputed domain name. The Respondent has used the disputed domain name in an email address to impersonate the Complainant and to send fraudulent emails to one of the Complainant’s customer. Such obvious fraudulent conduct is in bad faith. The disputed domain name does not resolve to an active web page. The Respondent is therefore not making any legitimate non-commercial or fair use of the disputed domain name. Hence, the Respondent has no rights or legitimate interests in respect of the disputed domain name

C. Bad Faith
The Panel believes that the Respondent registered the disputed domain name with knowledge of Complainant's rights. The disputed domain name was registered years after the registration of several trademarks of the Complainant and the Complainant used it widely since then. Furthermore, the combination in the disputed domain name of the ARLA mark with the Complainant´s business related not distinctive term "foods" shows that Respondent could not be ignorant to the Complainant´s trademark. The Respondent has been using the disputed domain name to commit fraud which also implies that the Respondent had the Complainant and its trademark in mind when it registered the disputed domain name. Finally, the Respondent used the disputed domain name in bad faith by illegally trying to divert payments of the Complainant’s customer. On these grounds, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARRLAFOODS.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2021-02-10

Publish the Decision