

Decision for dispute CAC-UDRP-103790

Case number	CAC-UDRP-103790
Time of filing	2021-05-06 11:15:07
Domain names	arllafood.com, arlafoods.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Arla Foods Amba
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Organization	paul wayne, john trading
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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 is the registered owner of several trademarks for the name ARLA, among which the following:

ARLA International registration No. 731917 of 20 March, 2000 designating several non-EU states as well as the EU;
ARLA International word and design registration No. 990596 of 8 September, 2008 designating US designating several non-EU states as well as the EU;
ARLA EUTM registration No. 018031231, claiming a priority date of 5 March 2019 and registered on 6 September 2019;
ARLA FOODS, Denmark registration, No. VR 2000 01185, claiming a priority date of 1 October 1999, registered on 6 March, 2000.

FACTUAL BACKGROUND

The Complainant is a dairy company based in Denmark and constituted in 2000, when the Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. According to the Consolidated Annual Report 2020 submitted by the Complainant, Arla Foods Amba employs 119.190 people across 105 countries and reached a global revenue of EUR 10.6 billion in 2020.

No information is known about the Respondent who acquired the disputed domain names <arllafood.com> and <arlaffoods.com> on 10 November, 2020 and 10 August, 2020, respectively.

The disputed domain names do not appear to be ever used in connection with any goods or services and directs to error page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The Complainant argues that the disputed domain names <arllafood.com> / <arlaffoods.com> and the Complainant's registered trademarks are confusingly similar.

Particularly, the Complainant contends that the disputed domain names incorporate a misspelled form of the Complainant's trademarks ARLA and ARLA FOOD.

Moreover, according to the Complainant, the use of a letter "L" in the first word element "ARLLA" and "F" in the second word element "FOOD" is indicative of the Respondent's intention of "typosquatting" as long as it is usual for Internet users to capitalize on errors (in typing or reading) when searching for, or trying to communicate with, the Complainant on Internet.

In view of the Complainant, the addition of a descriptive term – such as "food" – does not prevent a finding of confusing similarity to a trademark.

The Complainant also points out that the applicable Top-Level suffix "-com" does not per se prevent the likelihood of confusion.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed domain names or a name corresponding to the disputed domain names, nor that the Respondent has ever offered any goods or services under any of the disputed domain names, nor has making any businesses with the Complainant. Moreover, the Complainant states that the Respondent has not been licensed or authorized in other way to use the Complainant's trademarks nor to apply for or use any domain name incorporating such trademarks.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states that its business name and trademarks ARLA are widely known trademarks, thus the Respondents would have inevitably learnt about the Complainant, its trademark and business at the time of the disputed domain names' registration.

The disputed domain names <arllafood.com> and <arlaffoods.com> were registered under a privacy shield by hiding the registrant's identity and contact details, which is, according to the Complainant indicative of the Respondent's only intention to create confusion among Internet users.

The Complainant considers therefore that the Respondent choose to acquire and use the disputed domain names to create intentionally a confusion with the Complainant which is a prima facie case of bad faith use.

RESPONDENT:

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to trademarks 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 names (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 names have been registered and 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 of the Rules states that the Panel decides a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel draws such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidences provided in support of them.

1. The first issue in this case concerns the language in which the UDRP proceeding can be conducted.

The Rules for the Uniform Domain Name Dispute Resolution Policy (UDRP) dictate in the article 11 that the language for a dispute proceeding:

(a) 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.

In deciding the appropriate language of the proceeding, the Panel finds that English is the language of the Registration Agreement and that the disputed domain names include an English word element "FOOD" which in conjunction is sufficient to establish that the Respondent understand English. The Panel considers therefore reasonable to conduct the proceeding in English.

2.

The Panel finds that the disputed domain names <arllafood.com>, <arlaffoods.com> and the Complainant's registered trademarks "ARLA" and "ARLA FOODS", declared to be widely known marks with high degree of reputation (as stated in Arla Foods Amba v. Fredrik Enghall, WIPO Case No. D2016-1205 and Arla Foods Amba v. Nashan, CAC Case No. 101486), are similar to the extent that the disputed domain names completely reproduce the Complainant's registered trademarks and the

main element of its business name “ARLA”.

First of all, the word element “ARLLA” represents almost identical version of the Complainants registered trademarks “ARLA” where the addition of the repetitive letters “L” and “F” could be perceived rather as allusive to the Complainant’s trademarks.

Furthermore, the addition of the descriptive word element “FOOD” does not alter the same impression the disputed domain names and the registered trademarks produce.

Finally, the gTLD “.com”, needs to be disregarded under the confusing similarity test as it is a technical requirement of registration.

Accordingly, the Panel considers that the disputed domain names and the Complainant’s previously registered trademarks are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

3. According to the Complainant’s contentions and evidences submitted within this proceeding, which were not disputed, the Respondent does not appear to be in any way related to the Complainant’s business, does not act as the agent of the Complainant nor currently known and has never been known as “ARLA”, “ARLLA” or any combination of this names.

Furthermore, the disputed domain names <arllafood.com> and <arllafoods.com> are not associated with any business activity and instead has been used with the purpose of attracting Internet users and redirecting them to other webpages. Therefore, the Respondent does not appear to have a legitimate interest in the disputed domain names but rather appears to use it for his own commercial gain by creating a likelihood of confusion with the Complainant’s trademarks.

Consequently, and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

4. Given the widespread presence of the Complainant’s trademarks and the way how the Respondent is using the disputed domain names which reproduces completely the Complainant’s trademarks, the Panel finds that the Complainant intended to free ride on the reputation of Complainant’s trademarks in an attempt to exploit, for its commercial gain, Internet users destined for Complainant.

In other words, in the absence of sufficient evidence to the contrary and rebuttal from the Respondent, the Panel infers that by choosing to make use of the disputed domain names which are almost identical to Complainant’s trademarks the Respondent’s activity is indicative of registration of the disputed domain names in bad faith.

Furthermore, the Complainant notes that any of the disputed domain names resolve to any web site or other on-line presence, nor appears to have been used so far. In this regard, prior panels have discussed the passive holding of a domain names (e.g. in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003) and found that the passive holding itself can constitute bad faith use.

The Panelist recalls that „the relevant issue is not whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith”. (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The particular circumstances of this case, allow the Panel to infer that this is the case when the inactivity of the domain names’ holder could be considered as a bad faith use, given that:

(i) The Complainant’s business name and trademark “ARLA” are widely known, as evidenced by its substantial use in several countries;

(ii) The disputed domain names include (as the only element which is different from the Complainant’s trademark), the word “FOOD” which can be perceived as allusive to the food industry where the Complainant is operating its business activity;

(iii) The Respondent has taken active steps to hide its identity and has not reply to any of the Complainant's attempt of settlements;

(iv) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names.

Accordingly, the Panel finds that the Complainant has satisfied 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. **ARLLAFOOD.COM**: Transferred
2. **ARLAFFOODS.COM**: Transferred

PANELLISTS

Name	JUDr. Hana Císlarová, LL.M.
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DATE OF PANEL DECISION	2021-06-22
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Publish the Decision