

Decision for dispute CAC-UDRP-103811

Case number	CAC-UDRP-103811
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Time of filing	2021-05-21 10:06:51
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Domain names	arlaafoods.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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

Name	Dakhla Pelagic
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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 owns many registered trademarks including but not limited to:

- International mark No. 731917, for ARLA, registered on 20 March, 2000 including Australia;
- International mark No. 990596, for ARLA, registered on 8 September, 2008 including Australia;
- EUTM Registration No. 018031231 for ARLA registered on 6 September, 2019;
- Danish national registered mark for ARLA FOOD No. VR 2000 01185, registered on 6 March, 2000.

It also owns many other registered marks internationally. The Complainant also owns many domain names containing the trademark ARLA, among them: <arla.com> (registered 15 July 1996), <arla.eu> (registered 1 June 2006), <arlafoods.com>, <arlafoods.co.uk> (registered 1 October 1999) and <arlafoods.ca> (registered 29 November 2000). The Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its

FACTUAL BACKGROUND

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

The Complainant, Arla Foods, is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 Danish and Swedish dairy farmers, since 2000. It employs 119,190 people across 105 countries and had a global revenue of EUR 10,6 billion for the year 2020. Its products are famous and are household names including the brands ARLA®, LURPAK®, CASTELLO®, APETINA® and others. In Australia, where the Respondent resides, Arla has had a local agent/distributor, the importer, F. Mayer Imports, for the last 30 years. 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 disputed domain name was created on 12 August 2020 by the Respondent who is based in Australia and who appears to own a portfolio of domain names. Nothing else is known of the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

(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 ARLA® and ARLA FOOD® trademarks registered many years before the disputed domain name was created on 12 August 2020. The disputed domain name <arlafoods.com> incorporates, in its second-level portion, a misspelled form of the Complainant's trademarks ARLA and ARLA FOOD. The ARLA and ARLA FOOD trademarks are spelled with two letters "a" (in the term "arla") instead of one 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. The ARLA and ARLA FOOD trademarks are clearly recognizable in the disputed domain name. As previously held, the "insertion of a letter in the disputed domain name between 'arla' and 'foods' does not dispel the confusing similarity of the disputed domain name to the Complainant's marks, and is strongly evocative of typosquatting" (see *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. D2016-2213). 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). Moreover, previous UDRP panels have constantly held that the mere addition of a descriptive term – such as "food" or "foods" – would not prevent a finding of confusing similarity to a trademark (see *Minerva S.A. v. Domain Administrator, Fast Serv Inc. d.b.a. QHoster.com*, WIPO Case No. D2019-2767 and *Bouygues Travaux Publics v. Christian Gzaignes*, CAC Case No. 101690).

Furthermore, 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).

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name

The disputed domain name was registered on 12 August 2020 - many years after the first registrations of the Complainant's 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. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademark including the terms “arlaafoods.com” or “arlaafoods”. When conducting the search regarding the term “arlaafoods.com” or “arlaafoods” on popular Internet search engines such as “Google.com”, all the top results relate to the Complainant’s, its official websites and also third parties’ websites – directly referring to the Complainant.

When conducting the search by the name of the Respondent (Dakhla Pelagic) along with the term “arlaafoods”, there was no returned result showing the Respondent is known by the disputed domain name. When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms “arlaafoods.com” or “arlaafoods.” Furthermore, it appears that the disputed domain name has not been resolving to any active web pages by the moment of filing of this Complaint. 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. Tywonina W Hill*, WIPO Case No. DCO2017-0012). In addition, the Complainant tried to reach the Respondent by sending a cease-and-desist letter on 26 August 2020 to the e-mail gacsa.sarl@gmail.com as available in WHOIS records at the time of sending the letter as well as via abuse contact e-mail of the registrar abuse-contact@publicdomainregistry.com. The Complainant has not received any response from the Respondent. The Respondent has been granted opportunity to present some compelling arguments that it has 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 disputed domain name in connection with a bona fide offering of goods and services further demonstrate the Respondent’s lack of 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 trademarks and ARLA FOOD trademark. The ARLA trademark is a widely known trademark, as previously held by UDRP panels (see *Arla Foods Amba v. Fredrik Enghall*, WIPO Case No. D2016-1205 and *Arla Foods Amba v. Nashan*, CAC Case No. 101486), registered in many countries – including in Australia where the Respondent seems to be located 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 (see *Laboratoires M&L v. Zhaoxingming*, CAC Case No. 102277).

By conducting a simple online search regarding the terms “arlaafoods.com” or “arlaafoods”, the Respondent would have inevitably learnt about the Complainant, its trademark and business as all top results point to the Complainant (see *Intesa Sanpaolo S.p.A. v. Abayomi Ajileye*, CAC Case No. 102396). Further, the disputed domain name incorporates a misspelled version of the Complainant’s ARLA and ARLA FOOD trademark, adding an extra letter “a” to the ARLA trademark. This shows that the Respondent had the Complainant and its trademark in mind at the time it registered the disputed domain name.

The term “arlaa” is an intended misspelled form of the ARLA trademark. In addition, 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 trade name and business - one of the biggest European dairy producers and fifth largest in the world operating under the trade name Arla Foods Amba. It is very likely that the Respondent has 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 trademarks, domain names and trade name, the Respondent’s intent was likely to mimic the Complainant’s official domain names. It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when it 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 Technologies Ltd*, WIPO Case No. D2015-1922). 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 disputed 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, as previously mentioned, the disputed domain name incorporates, in its second-level portion, a misspelled form of the Complainant's trademarks ARLA and ARLA FOOD. The ARLA and ARLA FOOD trademarks are spelled with two letters "a" instead of one 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. 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 has not been resolving to an active website. It is provided in WIPO Overview 3.0 para 3.3 that "from the inception of the UDRP, panellists 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 also 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 Marshmallows*, WIPO Case No. D2000-0003).

Moreover, the Complainant tried to contact the Respondent 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. The Respondent chose not to reply to the cease-and-desist letter 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, the Complainant noted that the Respondent, while using the same e-mail address gacsa.sarl@gmail.com, has provided different physical addresses in various domain names that it registered, e.g. for ArkOnMat.com its physical address is in New Zealand, while for AdJml-vn.com its address is in the US, and these physical addresses do not seem to be the accurate, exact addresses that indicate the location of the Respondent. It appears that the Respondent has provided false WHOIS, which adds up to the finding of bad faith. Lastly, among the numerous domain names registered by the Respondent, some of which also contain third-party trademarks and/or with misspelling (e.g. americanexpress-bh.com, astrongroups.com, and allrichtradings.com, misspelling of Allrich Trading, crystalcoverseaseafood.com, misspelling of Crystal Cove Seafood, etc.) which has formed a pattern of conduct that further demonstrates the bad faith of the Respondent. In view of the above, the Complainant concluded 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.

i. The Complainant Arla Foods Amba – a well-known dairy producer globally, owns the widely-know trademark ARLA and the trademark ARLA FOOD which were registered before the disputed domain name;

- ii. The disputed domain name incorporates misspelled forms of the Complainant's trademarks and business name. The disputed domain name is therefore confusingly similar to the Complainant's trademarks ARLA and ARLA FOOD and to the Complainant's trade name – Arla Foods;
- iii. The Respondent has no relationship whatsoever with the Complainant or its ARLA trademark and is not commonly known by the disputed domain name;
- iv. The disputed domain name does not resolve to any active web pages. The Respondent is therefore not making any legitimate non-commercial or fair use of the disputed domain name;
- v. The Respondent knew the Complainant's well-known trademarks when registered the disputed domain name;
- vi. The disputed domain name clearly refers to the Complainant and their trademarks and has been passively held;
- vii. The Respondent has very likely provided false WHOIS information and it has registered numerous domain names containing third-party trademarks, which has formed a pattern of conduct.

Consequently, the Respondent should be considered to have registered the disputed domain name confusingly similar to the Complainant's well-known, distinctive trademarks. The Complainant has not found that the Respondent is of any legitimate right or interest in using the disputed domain name, but rather registered and has been using the disputed domain name in bad faith.

RESPONDENT:

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 and also that it is appropriate to give a decision in English.

PRINCIPAL REASONS FOR THE DECISION

A complainant's burden is set out in the UDRP Policy at paragraph 4(a) and he must prove all three limbs in relation to a respondent's registered domain name: namely, the (i) ..domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) [respondent has] ..no rights or legitimate interests in respect of the domain name; and (iii) ..domain name has been registered and is being used in bad faith.

There can be no question that here the Complainant has Rights in a name or mark identical or confusing similar for the first limb

of the Policy, paragraph 4(a)(i). The Complainant has a national mark in its home country of Denmark, an EUTM and two international registrations, both of which include the designation of Australia, where the Respondent resides. The Complainant is famous, as are its main branded products, LURPAK and CASTELLO. It is one of the largest dairy companies in the world and has been in trade in its current form since 2000. Its goods are sold worldwide.

The disputed domain name <arlaafoods.com> incorporates, in its second-level, a misspelled form of the Complainant's trademarks ARLA and ARLA FOOD. The difference is an extra letter "a" in the disputed domain name. This is typo squatting par excellence. The Complainant's trademarks appear to have been misspelled and this may be on purpose, in the absence of any other explanation for the selection of the disputed domain name. The ARLA and ARLA FOOD trademarks are clearly recognizable in the disputed domain name. As previously held, the "insertion of a letter in the disputed domain name between 'arla' and 'foods' does not dispel the confusing similarity of the disputed domain name to the Complainant's marks, and is strongly evocative of typosquatting" (see *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. D2016-2213). See also *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. D2015-1679) and *Minerva S.A. v. Domain Administrator, Fast Serv Inc. d.b.a. QHoster.com*, WIPO Case No. D2019-2767 and *Bouygues Travaux Publics v. Christian Gazonnes*, CAC Case No. 101690). The Complainant has discharged its burden under the first limb.

As to the second limb under paragraph 4(a)(ii) of the Policy, the Complainant must, in order to discharge its burden on this element, show a prima facie case that the Respondent is not known by the name or mark nor makes a bona fide offering under it. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455. Here, there is no evidence that the Respondent is known by the disputed domain name. The evidence shows that the Respondent has as many addresses as he has domain names, but the address given for the disputed domain name is in Perth, Western Australia, as provided at the point of registration in August 2020. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. See *Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com.>* Here it is not similar. There is also no other "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. Tywonina W Hill*, WIPO Case No. DCO2017-0012). The Panel has drawn the appropriate inferences and finds the Complainant has discharged its burden and there is no rebuttal.

Finally, as to Bad Faith registration, the WIPO Overview version 3.0, paragraph. 3.1.4 states: "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." Previously panels also stated the following: "...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 Marshmallows*, WIPO Case No. D2000-0003).

As to Bad Faith use, this is also a case of passive holding. That is not bad faith per se, but it is highly fact sensitive and all the circumstances of the case are relevant. The overview says these factors should be considered: "...panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case, the Complainant points to the silence of the Respondent and the pattern of cybersquatting by the Respondent who appears to have registered many other famous marks, all giving different addresses for WHOIS. This takes the matter over the line when combined with the fame of the Complainant and its trademarks. The Complainant has discharged its burden on all three limbs of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAAFOODS.COM:** Transferred

PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION	2021-06-28
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Publish the Decision
