

Decision for dispute CAC-UDRP-103792

Case number CAC-UDRP-103792

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Domain names arlafoods.top

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Arla Foods Amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Organization Cao Cong Gang

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 registrations for the ARLA and ARLA-formative marks, including:

- (i) International Registration No. 731917, registered on March 20, 2000, designating, inter alia, China;
- (ii) International Registration No. 990596, registered on September 8, 2008 designating, inter alia, China;
- (iii) EU Trademark Registration No. 018031231, registered on September 6, 2019; and
- (iv) Danish Trademark Registration No. VR2000 01185 (for ARLA FOODS), registered on March 6, 2000.

The Complainant also owns many domain name registrations which contain the trademark ARLA, including <arla.com> (registered on July 15, 1996), <arla.eu> (registered on June 1, 2006), and <arlafoods.com> (registered on October 1, 1999).

The Complainant uses its domain names to resolve to its official websites through which it informs Internet users and potential customers about its products and services under the ARLA trademarks.

FACTUAL BACKGROUND

The Complainant, Arla Foods Amba, was established in 2000 and is the fifth largest dairy company in the world. It is a co-operative owned by more than 12,500 dairy farmers. It has 119,190 employees across 105 countries, with a global revenue in 2020 of EUR 10.6 billion.

The Complainant has a strong and established presence in Asia, with offices in China, where the Respondent is located, as well as Hong Kong, Japan, Indonesia, Malaysia and the Philippines.

Significant investments have been made by the Complainant in promoting its products and ARLA brand. The Complainant has a strong online presence via its website and on social media platforms.

A cease and desist letter was sent by the Complainant to the Respondent on December 24, 2020, as was a reminder on January 12, 2021, but no response was received.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark in which it has rights. The Complainant owns many ARLA trademark registrations which were registered many years before the disputed domain name was registered.

The disputed domain name wholly incorporates the Complainant's trademarks ARLA and ARLAFOODS. "Arla Foods" is also a part of the trade name of the Complainant, which has been used for decades. Moreover, the addition of the descriptive term "foods" in the disputed domain name does not serve to prevent a finding of confusing similarity with the Complainant's ARLA trademark. The addition of the generic top-level domain ("gTLD") ".top" is also insufficient to avoid a finding that the disputed domain name is identical or confusingly similar to its ARLA and ARLAFOODS marks.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The disputed domain name was registered on December 3, 2020, many years after the first registrations of the Complainant's ARLA and ARLAFOODS trademarks. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding trademark which include the terms "arlafoods.top" or "arlafoods". In addition, the Respondent is not affiliated to the Complainant nor licensed or authorized by the Complainant to use or register the disputed domain name.

The Respondent is not making any legitimate noncommercial or fair use of the disputed domain name. The disputed domain name redirects Internet users to a webpage containing pay-per-click links. At the time the Complainant sent the cease and desist letter to the Respondent (in December 2020), the links displayed on the said webpage had references to "Arla" and the business of the Complainant ("dairy milk"). At the time of filing of the Complaint (May 2021), the disputed domain name redirected Internet users to a webpage with pay-per-click links which referenced, inter alia, "fast food delivery" and "meat vegan kit". The links led to the websites of third-party food suppliers.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's ARLA and ARLA FOODS marks at the time the disputed domain name

was registered. The Complainant's ARLA and ARLA FOODS trademarks have been used for many years and are widely known, even in China where the Respondent is located.

The Complainant asserts that the Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website (per paragraph 4(b)(iv) of the Policy).

The Respondent's failure to respond to the Complainant's cease and desist letter is also indicative of bad faith on the Respondent's part.

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.

Preliminary Issue: Language of Proceedings

Paragraph 11(a) of the Rules provides that:

"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."

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) the disputed domain name contains the term "foods" which is a very common English word;
- (ii) the website to which the disputed domain name resolves are all in English;
- (iii) the English language, being commonly used internationally, is a neutral language for both parties; and
- (iv) the translation of the Complaint into Chinese would entail significant additional costs for the Complainant and result in a delay of the proceeding.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the circumstances of this case, the Panel determines that it is appropriate that English applies as the language of the proceeding. The Panel agrees that the Respondent appears to be familiar with the English language, taking into account his selection of the word "Arla" in combination with the word "foods", and the gTLD ".top", rather than Chinese characters. The Respondent has failed to respond and show that he does not understand the English language. Accordingly, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the ARLA and ARLA trademarks.

The sole difference between the disputed domain name and the Complainant's ARLA trademark lies in the addition of the descriptive term "foods" and the gTLD ".top". The only difference between the disputed domain name and the Complainant's ARLAFOODS trademark is the addition of the gTLD ".top".

The addition of a descriptive term does not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8). In addition, gTLDs are viewed as a standard registration requirement and, as such, are disregarded under the first element of paragraph 4(a) of the Policy (WIPO Overview 3.0, section 1.11). (See *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.* WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's ARLAFOODS trademark and similar to the ARLA trademark. The element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or interests in respect of the domain name. Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to show that he has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to assert any such rights or legitimate interests.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed

domain name, nor even “Arla”. The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name. He therefore failed to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The distinctive character of the Complainant’s ARLA mark and the extent to which the mark has been used across the world gives weight to the Complainant’s argument that the Respondent is unlikely to have registered the disputed domain name without knowledge of the Complainant’s ARLA trademarks. The disputed domain name incorporating the combination of the Complainant’s well-established ARLA trademark in combination with the word “foods”, which corresponds to the type of goods the Complainant deals in, leads to a presumption of bad faith registration and use. The Panel finds that the use of the disputed domain name to generate revenue through pay-per-click links based on the trademark value of the Complainant’s ARLA and ARLA trademarks to constitute registration and use in bad faith. (See *Camilla Australia Pty Ltd v. Domain Admin, Mrs Jello, LLC*, WIPO Case No. D2015-1593.) The Respondent is intentionally attempting to attract, for commercial gain, Internet users to his website or other online location by creating a likelihood of confusion with the Complainant’s trademarks (paragraph 4(b)(iv) of the Policy. Indeed, any Internet user looking at the disputed domain name would have a reasonable expectation that it would lead to a website of, or one which is endorsed by the Complainant.

The Respondent did not submit a Response in this proceeding, which is a further indication of the Respondent’s bad faith. The Panel also notes that the Respondent did not respond to the Complainant’s cease and desist letters which were filed prior to the commencement of the proceeding.

The Panel is therefore of the view that the Respondent has registered and used the disputed domain name in bad faith. Accordingly, paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ARLAFOODS.TOP: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2021-06-29

Publish the Decision
