

Decision for dispute CAC-UDRP-103985

Case number CAC-UDRP-103985

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Domain names arilafoods.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Arla Foods amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Name JOE VICKY

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 a portfolio of word and device trade marks consisting of the name ARLA in multiple classes and numerous countries around the world, including the International trade mark ARLA, registration number 731917, designating the United States, first registered on 20 March 2000, in international classes 01, 05, 29, 30, 31, and 32; the International trade mark ARLA, registration number 990596, designating the United States, first registered on 8 September 2008, in international classes 01, 05, 29, 30, 31 and 32; the International trade mark ARLA NATURA, registration number 1172732, designating the United States, first registered on 3 May 2013, in international class 29; and the Danish trade mark ARLA FOOD, first registered on 6 March 2000, in international classes 01, 05, 29, 30, 31 and 32. The Complainant's trade mark registrations predate the registration of the disputed domain name.

Furthermore, the Complainant owns multiple domain names consisting of the name ARLA, including <arla.com>, registered on 15 July 1996; <arla.eu>, registered on 1 June 2006; <arilafoods.com> and <arilafoods.co.uk>, registered on 1 October 1999; and <arilafoods.ca>, registered on 29 November 2000, which are all connected to the Complainant's official websites through which it informs Internet users and consumers about the ARLA products and services.

FACTUAL BACKGROUND

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

Arla Foods 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 billion for the year 2019. The Complainant enjoys a strong online presence via its official website and social media accounts.

Arla Foods Amba also has a strong and established presence in US dairy market. The Complainant has offices in United States, namely, through Arla Foods Inc, USA (New Jersey), and operates a dedicated US website, <arlaus.com>.

The Complainant submits that Arla Food's products are easily recognized by 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 the brand names ARLA®, LURPAK®, CASTELLO®, APETINA®, and others.

The disputed domain name <arilafoods.com> was first registered on 25 July 2021. The disputed domain name currently resolves to an error page. There is no evidence before the Panel that the disputed domain name has ever been used for an active website since it was registered.

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 trade mark 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

The Panel is grateful to the Complainant's representative for the comprehensive and well drafted submissions in the Complaint.

With regard to the first UDRP element, the Panel finds that the disputed domain name <arilafoods.com> is confusingly similar to the Complainant's trade marks ARLA and ARLA FOOD. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety, save that the disputed domain name adds the letter "i" to the ARLA element of the Complainant's trade marks. The Panel considers this case to be a plain case of "typo-squatting", i.e., the disputed domain name contains an obvious and intentional misspelling of the Complainant's trade marks, which is not sufficient to alter the overall impression of the designation as being connected to the Complainant's trade marks. The addition of the letter "i" is a

minor alteration to the Complainant's trade marks and does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered to be confusingly similar to the relevant trade mark (see, for example, CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetreebates.com>; CAC Case No. 101990, JCDECAUX SA -v- Emma Purnell <jcdeceux.com>; CAC case No. 101892, JCDECAUX SA -v- Lab-Clean Inc <jcdacaux.com>; WIPO Case No. D2005-0941, Bayerische Motoren Werke AG, Sauber Motorsport AG v. Petaluma Auto Works <bmwsauberf1.com>; and WIPO Case No. D2015-1679, LinkedIn Corporation -v- Daphne Reynolds <linkedlnjobs.com>).

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. Indeed, the disputed domain name is not being used for any active website but resolves to an error page. A lack of content at the disputed domain has in itself been regarded by other panels as supporting a finding that the Respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade mark or to apply for or use the disputed domain name. In addition, the Whois information does not suggest that the Respondent is commonly known by the disputed domain name <arilafoods.com>.

Finally, the Complainant adduced evidence in its submissions to show that the disputed domain name has been used for phishing/scam purposes by sending e-mails from the disputed domain, seeking to impersonate the Complainant in an attempt to obtain sensitive personal information and solicit payments from the recipient of the e-mails. The Panel categorially agrees with the Complainant's submission that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. The Panel follows in this regard an established line of cases: CAC Case No. 101578 <ARLEFOOD.COM> found that "To the contrary, it appears that the Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent". See also CAC Case No. 102290 <PEPSICOGDV.COM> (carrying out phishing attacks spoofing the Complainant's identity to send fraudulent emails for financial gain); and, most recently, CAC Case No. 103393 <SonyCreativeSoftware.Info> ("the use of a domain name for illegal activity (e.g. phishing) can never confer rights or legitimate interests on a respondent").

Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, the Complainant asserts that the Respondent was clearly aware that the ARLA and ARLA FOOD trade marks were already registered and being used by the Complainant since the disputed domain name was deliberately being used to send phishing e-mails, seeking to impersonate the Complainant. In any event, the Panel agrees with the Complainant that, if the Respondent had carried out Google search for the names ARLA and ARLA FOOD, the search results would have yielded immediate and obvious references to the Complainant. It is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical with or confusingly similar to the Complainant's trade marks and that he registered the disputed domain name in full knowledge of the Complainant's trade marks.

Furthermore, the website related to the disputed domain name is currently inactive and resolves to an error page. The Respondent has not demonstrated any activity in respect of the disputed domain name. First, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law under circumstances where that disputed domain name corresponds to the

Complainant's trade marks and is similar to the Complainant's domain names currently used by the latter to promote its goods and services. Secondly, numerous other UDRP decisions have taken the view, which this Panel shares, that the passive holding of a domain name with knowledge that the domain name infringes another party's trade mark rights may in itself be regarded as evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2004-0615, Comerica Inc. v. Horoshiy, Inc.).

Indeed, in its submissions, the Complainant adduced evidence to show that the disputed domain name has been used for sending phishing e-mails, seeking to persuade the recipient to disclose confidential information and sensitive data, and to obtain fraudulent payments. The Panel again follows an established line of cases in finding that registration and use of a domain name for such purposes constitutes bad faith. See, for example: WIPO Case No. D2018-1815 <hidQlobal.com>: "Respondent registered the disputed domain name which is nearly identical in appearance to Complainant's distinctive trademark. As the disputed domain name effectively impersonates Complainant, there is no evident ground for Respondent to have selected it, other than for using it to induce Internet users, including email recipients, to confuse the owner/sponsor of a website or the sender of an email with Complainant and its products. Regrettably, it is not uncommon for domain names which closely approximate distinctive trademarks to be used as instruments of fraud or other abuse. Respondent has failed to provide any explanation for its decision to register the disputed domain name, and the Panel is unable to discern or infer any plausible legitimate reason for Respondent to have registered the disputed domain name. These circumstances are sufficient to establish Respondent's registration and use of the disputed domain name in bad faith". Further, CAC Case No. 101578 (<ARLEFOOD.COM>) concluded that: "As recognized in previous UDRP decisions, the use of a domain name for purposes other than to host a website may constitute bad faith where, like in the case at hand, the circumstances suggest that the disputed domain name has been used for fraudulent purposes such as the sending of deceptive emails to obtain sensitive or confidential personal information or to solicit payment of fraudulent invoices by the Complainant's actual or prospective customers". In similar circumstances, previous UDRP panels have also stated that "the use of the disputed domain name in connection with a fraudulent email scheme can only lead to the conclusion that the disputed domain name is being used in bad faith" (see, for example, SAP SE v. Anuluwapo Akobi, WIPO Case No. D2018-0624 <aribacompany.com>).

Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts 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. ARILAFOODS.COM: Transferred

PANELLISTS

Name	Gregor Kleinknecht
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DATE OF PANEL DECISION 2021-09-20

Publish the Decision
