

Decision for dispute CAC-UDRP-104029

Case number	CAC-UDRP-104029
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Time of filing	2021-09-23 08:56:06
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Domain names	arlafoocls.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	steve mark
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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 trademark registrations consisting of and/or containing the term ARLA, e.g. Danish national registration ARLA FOODS no. VR 2000 01185, registered on March 6, 2000.

FACTUAL BACKGROUND

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

It results from the Complainant's undisputed allegations that it was constituted in 2000 and is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. It employs 119,190 people across 105 countries.

Moreover, the Complainant owns and uses various domain names including the wording "ARLA FOODS", in particular <arlafoods.com> (created on October 1, 1999), <arlafoods.co.uk> (created on October 1, 1999) and <arlafoods.net> (created on February 21, 2000) which resolve to a website through which it informs about its products and services.

The Complainant further contends the distinctiveness and reputation of its trademark.

The disputed domain name <arlafoocls.com> was created on August 12, 2021 and resolves to an inactive webpage.

The Complainant further provided evidence that the Respondent used the disputed domain name to pass itself off as a Complainant's employees to conduct a phishing scheme.

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

1. The Panel finds that the disputed domain name <arlafoocls.com> is confusingly similar to the Complainant's trademark. In the case at issue the Complainant's registered trademark "ARLA FOODS" is almost fully included in the disputed domain name.

On this regard, it is the view of this Panel that the deletion of the consonant "d" and the addition of the consonants "c" and "l" between the letters "o" and "d" result to be a common, obvious or intentional misspelling of Complainant's trademark and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.9.

Finally, the gTLD ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see "WIPO Overview 3.0" at section 1.11.1).

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name.

Finally, the disputed domain name resolves to an inactive website and the Complainant provided evidence that the Respondent used the disputed domain name to pass itself off as one of the Complainant's employees, to conduct a phishing scheme. Such use can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or

service mark at issue; see “WIPO Jurisprudential Overview 3.0” at point 2.13.1: “Panels have categorically held that the use of a domain name for illegal activity (e.g. the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. The Panel shares this view.

3. It is the view of this Panel that the Respondent has intentionally registered the disputed domain name which employs a misspelling of the Complainant’s trademark. By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant’s rights on its trademark. The finding of bad faith is confirmed by the fact that the Respondent failed to submit a response and that the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant’s trademark, on this regard this Panel shares the view mentioned in WIPO Jurisprudential Overview 3.0” at point 1.9: “(...) Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the Respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the Complainant”.

The Complainant also proved that the Respondent used the disputed domain name to pass itself off as one of the Complainant’s employees to conduct a phishing scheme, so that the Panel is satisfied that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location, or of a product or service on the Respondent’s web site or location. On this regard, this Panel shares the view mentioned in “WIPO Jurisprudential Overview 3.0” at point 3.1.4: “(...) “given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods and phishing can never confer rights or legitimate interest on a respondent, such behaviour is manifestly considered evidence of bad faith”.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARLAFOOCLS.COM**: Transferred

PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION 2021-11-04

Publish the Decision
