

Decision for dispute CAC-UDRP-104082

Case number CAC-UDRP-104082

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Domain names rlafoods.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Arla Foods Amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Organization zhen wang

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 owner, among others, of the following trademark registrations for ARLA:

- International trademark registration number 731917 for ARLA, registered on March 20, 2000;
- International trademark registration number 990596 for ARLA, registered on September 8, 2008;
- International trademark registration number 1172732 for ARLA NATURA, registered May 3, 2013; 2000;
- EUIPO trademark registration number 18031231 for ARLA, registered on September 6, 2019; and
- Denmark trademark registration number VR 2000 01185 for ARLA FOODS, registered on March 6, 2000.

The Complainant also owns domain names containing the trademark ARLA, among them: <arla.com> (registered on July 15, 1996), <arla.eu> (registered on June 1, 2006), <arlafoods.com>, <arlafoods.co.uk> (registered on October 1, 1999) and <arlafoods.ca> (registered on November 29, 2000).

FACTUAL BACKGROUND

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

The Complainant is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. It was constituted in 2000, when the largest Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. The Complainant employs 19,172 people across 105 countries and reached a global revenue of EUR 10.6 billion for the year 2020. The Complainant has a strong and established presence globally including in Asia- Pacific. The Complainant has offices in China, Bangladesh, Japan, Indonesia, Hong-Kong, Korea, Malaysia, Philippines, Taiwan and others. The Complainant'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 its famous brands ARLA®, LURPAK®, CASTELLO®, APETINA® and others. The Complainant also enjoys a strong online presence via its official website and social medias. Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of notoriety of its marks around the world. The Complainant is the owner, among others, of the trademarks mentioned above. The disputed domain name was registered on July 16, 2021. The disputed domain name resolves to an active page displaying adult/pornographic content as well as links to gambling web-sites.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

- i) The Complainant contends that it has rights in the mark ARLA (international trademark registration number 731917, registered on March 20, 2000; EUIPO trademark registration number 18031231, registered on September 6, 2019) and in the mark ARLA FOODS (Denmark trademark registration number VR 2000 01185, registered on March 6, 2000) among others. The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's trademarks "ARLA" and "ARLA FOODS" because the disputed domain name incorporates, in its second-level portion, a misspelled form of the Complainant's trademarks ARLA and ARLA FOODS.
- ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name or owns any corresponding registered trademark including the terms "rlafoods.com". 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."
- iii) The Respondent knew the Complainant's trademark at the time it registered the disputed domain name, and thus it registered it in bad faith as shown by various exhibits. The disputed domain name is used in bad faith. The Respondent is exploiting the Complainant's rights in the marks 'ARLA' and 'ARLA FOODS' to attract Internet users to its websites so as to access the "adult content". This will inevitably damage the Complainant's goodwill in its marks.

RESPONDENT:

The Respondent did not submit a Response.

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

Preliminary Issue: Language of the Proceedings

The Panel notes that the Registration Agreement is written in Japanese, thereby making the language of the proceedings in Japanese. The Complainant has requested that the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking into consideration the particular circumstances of the administrative proceeding. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also *Lovehoney Group Limited v yan zhang*, CAC 103917 (CAC August 17, 2021) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Japanese being designated as the required language in the registration agreement). The Complainant contends that:

- i) The disputed domain name incorporates, in its first level portion, the Complainant's ARLA trademark – misspelled by omitting the first letter “a” – with the addition of the term “foods” which is not only the part of the trade name of the Complainant but also their registered trademark ARLA FOODS. The term “foods” is very commonly used noun in daily English language, therefore the Respondent aimed on targeting English speaking visitors;
- ii) The Complainant is a global company, originally founded in Denmark, having its website at “arla.com” (among other websites) displayed in English language, and it appears that the Respondent is located in China. The English language, being commonly used internationally, would be considered as neutral for both parties in the present case. It would therefore be fair to the parties that the language of the present proceeding be English; and
- iii) Moreover, should the language of the proceedings be different from English, a translation of the Complaint in such a language would entail significant additional costs for the Complainant and delay the proceedings.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive argument has been adduced by the Complainant. After considering the circumstance of the present case, in the absence of Response and no objection to the Complainant's request for the language of proceeding, the Panel decides that the proceeding should be in English.

The Panel is satisfied that all other 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(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it has rights in the mark ARLA (international trademark registration number 731917, registered on March 20, 2000; EUIPO trademark registration number 18031231, registered on September 6, 2019) and in the mark ARLA FOODS (Denmark trademark registration number VR 2000 01185, registered on March 6, 2000) among others. The Complainant has provided the Panel with each copy of the trademark registrations at issue. Registration of a mark with

national, regional and international trademark authorities sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the marks “ARLA” and “ARLA FOODS.”

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant’s trademarks “ARLA” and “ARLA FOODS” because the disputed domain name incorporates, in its second-level portion, a misspelled form of the Complainant’s trademarks ARLA and ARLA FOODS. The Complainant’s mark ARLA is misspelled by omitting the first letter “a”. The Complainant’s mark ARLA FOODS is misspelled in a similar way, by removing the letter “A” from the trademark ARLA, the term FOODS is included entirely. The Complainant also points out that Arla Foods is a company name under which the Complainant is operating globally for decades. The Complainant highlights that the term «rla» is an intended misspelled version of the ARLA and ARLA FOODS trademarks.

The Panel agrees with the Complainant and notes that the addition of '.com' gTLD and a descriptive term such as FOODS is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain name and trademarks. The Panel further notes that the Complainant’s ARLA trademark is misspelled by omitting the first letter “a,” and its ARLA FOODS trademark is misspelled in a similar way, by removing the letter “A” from the trademark ARLA, the term FOODS is included entirely. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks ARLA and ARLA FOODS.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 commonly known by the disputed domain name or owns any corresponding registered trademark including the terms “rlafoods.com”. Therefore, the Panel finds the Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).

The Complainant further contends that at the time of filing of the complaint, the disputed domain name resolved to an active page displaying numerous active windows hosting adult/pornographic content as well as links to gambling websites. 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. The Panel agrees and finds that the disputed domain name does not constitute either a bona fide offering of goods or services or a legitimate non-commercial or fair use under Policy paragraph 4(c)(i) and (iii).

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent’s

documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith.

Firstly, the Complainant contends that the Respondent knew the Complainant's trademark at the time of registering the disputed domain name, and thus it registered the disputed domain name in bad faith by submitting various exhibits. While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use Respondent makes of the disputed domain name. See *Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also *AutoZone Parts, Inc. v. Ken Belden*, FA 1815011 (Forum Dec. 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). Complainant provides evidence that goes to the notoriety and fame of the 'ARLA' and 'ARLA FOODS' marks. The Panel, infers due to the notoriety of the Complainant's marks and the manner of use of the disputed domain name that the Respondent had actual knowledge of the Complainant's rights in the 'ARLA' and 'ARLA FOODS' marks at the time of registering the disputed domain name, and thus it finds bad faith registration of the disputed domain name under Policy paragraph 4(a)(iii).

Next, the Complainant contends that the disputed domain name is used in bad faith. It contends that the Respondent is exploiting the Complainant's rights in the marks 'ARLA' and 'ARLA FOODS' to attract Internet users to its websites so as to access the "adult content". This will inevitably damage the Complainant's goodwill in its marks. Previous panels have held that such use of a disputed domain name may demonstrate bad faith under Policy paragraph 4(a)(iii). See *Molson Canada 2005 v. JEAN LUCAS / DOMCHARME GROUP*, FA1412001596702 (Forum February 10, 2015) ("Further, Respondent's diversion of the domain names to adult-oriented sites is registration and use of the disputed domain names in bad faith under Policy 4(a)(iii)."). As noted previously, the Complainant has provided the Panel with screenshots of the disputed domain name's resolved webpages displaying numerous active windows hosting adult/pornographic content as well as links to gambling websites. The Panel therefore finds the Respondent's bad faith registration and use of the disputed domain name under Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. RLAFOODS.COM: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm, Esq.
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DATE OF PANEL DECISION 2021-11-20

Publish the Decision
