

Decision for dispute CAC-UDRP-104332

Case number CAC-UDRP-104332

Time of filing 2022-02-07 13:14:00

Domain names arlafoods.shop

Case administrator

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

Complainant

Organization Arla Foods Amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Cao Cong Gang

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- International registration no. 731917, designating China, registered 20 March 2000, for the mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification;
- International registration no. 990596, designating China, registered 8 September 2008, for the figurative mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification;
- Chinese trade mark registration no. 5174319, registered 21 March 2009, for the mark ARLA FOODS, in class 29 of the Nice Classification;
- EU trade mark registration no. 018031231, registered 6 September 2019, for the mark ARLA, in classes 1, 5, 9, 16, 29, 30, 32, 35, 39, 41, 42, 43, 44 and 45 of the Nice Classification; and
- Danish trade mark registration no. VR200001185, registered 6 March 2000, for the mark ARLA FOODS, in classes 1, 5, 29,

30, 31 and 32 of the Nice Classification.

(hereinafter, collectively or individually, the Complainant's trade marks; the ARLA trade mark and the trade mark ARLA interchangeably; and the ARLA FOODS trade mark and the trade mark ARLA FOODS interchangeably).

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant is the fifth largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. The Complainant was constituted in 2000, when the largest Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. In 2020, the Complainant reached a global revenue of EUR 10.6 billion spanning across 105 countries.

The Complainant has a strong presence in the Asian dairy market including an office in China, which revenue totalled EUR 171 million in 2020.

The Complainant enjoys a strong online presence and a high degree of renown around the world.

In addition to the trade marks set out under the above section "Identification of rights", the Complainant owns numerous domain names containing the trade mark ARLA, most notably <arla.com> (registered on 15 July 1996); and <arlafoods.com> (registered on 1 October 1999).

The disputed domain name <arlafoods.shop> was registered on 21 November 2021 (the disputed domain name).

The Complainant claims that the disputed domain name incorporates the trade mark ARLA with the addition of the descriptive term "foods"; that ARLA FOODS trade mark is incorporated entirely; and that UDRP panels have held domain names to be confusingly similar if the entirety of a trade mark, or at least a dominant part of it, is recognisable in the domain name.

The Complainant further claims that the generic Top-Level Domain (gTLD) <.shop> is a standard registration requirement and, therefore, should be disregarded in the assessment of confusing similarity.

The Complainant therefore concludes that the disputed domain name is identical and confusingly similar to the Complainant's trade marks.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not affiliated with, nor authorised, endorsed or sponsored by, the Complainant in any way, nor is Respondent known by the disputed domain name. In fact, the Complainant claims that the use of a privacy shield by the Respondent reinforces the assumption that the Respondent is not known by the disputed domain name.

The Complainant informs that it has sent a cease-and-desist letter to the Respondent, which remains unanswered, at which point in time the disputed domain name resolved to a parking page where the disputed domain name was offered for sale for USD 1,999 (the Respondent's website). The Complainant further informs that the Respondent does not hold any trade mark rights in the term "arlafoods.shop".

The Complainant therefore concludes that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair

use.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant states that the disputed domain name was registered many years after the first registration of the Complainant's marks; that the ARLA trade mark is widely known and this has been found by previous UDRP decisions (e.g. Arla Foods Amba v. Nashan, CAC Case No. 101486); that the Complainant's trade marks are registered in many countries, including in China where the Respondent appears to be based; and that the Complainant enjoys a strong online presence.

The Complainant further refers to the Complainant's trade marks being fully incorporated into the disputed domain name, and also to the direct reference to the Complainant's business name (Arla Foods Amba).

Therefore, the Complainant states that it is inconceivable that the Respondent was unaware of the Complainant at the time of registration of the disputed domain name.

Use

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs. The Complainant further avers that an offer to sell a disputed domain name in excess of out-of-pocket costs may evidence bad faith under paragraph 4(b)(i) of the UDRP Policy. The Complainant also quotes the circumstance set out in paragraph 4(b)(iv) of the UDRP Policy.

In order to further support the bad faith ground, the Complainant alludes to paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), according to which: "[...] 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...".

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the Respondent's failure to respond to the Complainant's cease-and-desist letter, and the Respondent's use of a privacy shield.

In view of the above, the Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trade marks 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).

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 matter – Language of Proceeding

A. The Complainant's request

On the matter of the language of the proceedings, the Panel notes as follows:

- The Complainant submitted its Complaint in English and made a pre-emptive request that English be the language of the proceedings;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- The Complainant's grounds for English to be the language of the proceedings can be summarised as follows: (i) the disputed domain name is composed of the English word "foods"; (ii) the disputed domain name resolves to an active website where the disputed domain name is being offered for sale in English, and that the Respondent's website contains further references in English language; (iii) the Complainant is originally from Denmark whereas the Respondent appears to be based in China, such that the English language, being commonly used internationally, would be considered as neutral and fair for both parties; (iv) a translation of the Complaint would entail significant additional costs for the Complainant and would cause delay to the proceedings.

B. The Panel's determination

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the proceedings. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel accepts that English is the only identifiable language in the disputed domain name string;
- (ii) the content of the Respondent's website: the references on the Respondent's website are in English only, as asserted by the Complainant, which suggests to the Panel that the Respondent has knowledge of the English language;
- (iii) the language(s) of the parties: the Complainant is originally from Denmark and the Respondent appears to reside in China;
- (iv) the Respondent's behaviour (prior to, and in the course of the proceedings): the Panel notes that the Respondent has shown no inclination to participate in the proceedings; the Respondent did not respond to the Complainant's cease-and-desist letter, nor did it file a Response;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and

(vi) the balance of convenience: while determining the language of proceedings, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of proceedings – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not the least given the Respondent's default and overall disinterest throughout the proceedings. The determination of Chinese as the language of proceedings, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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

I. The UDRP threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

II. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in "ARLA" and "ARLA FOODS" since 2000.

The disputed domain name is <arlafoods.shop>, and the Complainant's trade marks are ARLA and ARLA FOODS.

The Panel has no difficulty in finding that the disputed domain name is identical to the Complainant's trade mark ARLA FOODS.

For the sake of argumentation, the Panel also notes that the disputed domain name is confusingly similar to the Complainant's trade mark ARLA, bearing in mind the only difference is the additional descriptive term "foods" adjacent to the term "Arla". Nevertheless, the additional term has the effect of enhancing the confusing similarity as it evokes the Complainant's business, and so does the gTLD <.shop>, the latter being typically disregarded by UDRP panels under this

Policy ground.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

III. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (UDRP Rule 14 (b)).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation/endorsement/sponsorship for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; that the Respondent does not hold any trade mark rights in the term "arlafoods.shop"; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent has submitted no evidence to refute any of the Complainant's assertions.

On balance, the Panel considers the available evidence to lend credence to the Complainant's contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

IV. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been in operation since at least 2000, and has trade marks rights and a presence in China, where the Respondent appears to be based;
- The Complainant operates its activities through the domain name <arla.com>, which was registered in 1996;
- The disputed domain name <arlafoods.shop> was registered on 21 November 2021; and
- UDRP panels have consistently found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its market field.

Use

The Complainant has adduced evidence to demonstrate that the disputed domain name had been offered for sale for a total price of USD 1,999, which may evidence bad faith under paragraph 4(b)(i) of the UDRP Policy.

The Complainant further refers to the Respondent as being engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

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

At the time of writing, the disputed domain name resolves to a webpage which displays the following message: "This domain listing is deleted. The domain might become available for sale again in the future. Check back later".

The Panel refers in tandem to paragraphs 3.1.1 and 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a finding under the above circumstances, most compellingly in the present matter: (i) the Respondent's likely knowledge of the Complainant's rights; (ii) the distinctiveness of the Complainant's trade marks; (iii) the actual confusion between the disputed domain name and the Complainant's trade marks; (iv) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (v) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain name; and (vi) the absence of any conceivable good faith use of the disputed domain name.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ARLAFOODS.SHOP: Transferred

PANELLISTS

| | |
|------|-----------|
| Name | Yana Zhou |
|------|-----------|

| | |
|------------------------|------------|
| DATE OF PANEL DECISION | 2022-03-28 |
|------------------------|------------|

Publish the Decision