

## Decision for dispute CAC-UDRP-104656

Case number CAC-UDRP-104656

Time of filing 2022-06-17 09:47:11

Domain names arlafoods.com

### Case administrator

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

### Complainant

Organization Arla Foods Amba

### Complainant representative

Organization BRANDIT GmbH

### Respondent

Name Xong Vang

#### 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 a Danish company registered under the ARLA FOOD denomination and is the owner of several national and international trademarks including: international trademark ARLA No. 731917, registered on March 20, 2000; International trademark ARLA (figurative) No. 990596, registered on September 8, 2008; EU trademark registration ARLA 018031231 registered on September 6, 2019; Denmark trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000.

#### FACTUAL BACKGROUND

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

#### Language of Proceedings

According to the official website of the Registrar the language of the Registration Agreement is English. This was confirmed by the Registrar Verification. The language of the proceeding should therefore be English.

The Disputed Domain Name incorporates, in its second level portion, the misspelled form of the Complainant's ARLA and ARLA FOODS trademarks – misspelled by adding an extra letter “l” that follows letter “A” in the term “ARLA” so it appears as “ALRLA”. The term “foods” is very commonly used noun in daily English language. Using such term in the first level portion of the domain name shows that the Respondent understands English and has intended, by registering such domain name, to target English speaking Internet users.

The Complainant is a global company, originally founded in Denmark, having its website at “arla.com” displayed in the English language, and it appears that the Respondent is located in US. 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 (See *Intesa Sanpaolo S.p.A. v. Ida Ekkert*, CAC Case No. 102263).

#### Factual background

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 10,6 billion for the year 2020.

Arla Food's products are easily recognized by the 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, Complainant enjoys a high degree of renown around the world.

The Complainant also owns numerous 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). The Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its ARLA mark and its products and services.

#### Legal grounds

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant owns numerous ARLA and ARLA FOODS trademarks registered many years before the Disputed Domain Name <alrlafoods.com> was created (on April 11, 2022) .

The Domain Name incorporates, in its second-level portion, a misspelled form of the Complainant's trademarks ARLA and ARLA FOODS.

The ARLA and ARLA FOODS trademarks are misspelled in the Disputed Domain Name <alrlafoods.com>. It is a typosquatting situation: the Complainant's trademarks have been misspelled on purpose in the Domain Name in order to capitalize on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, the Complainant on Internet. It confirms that the term «alrla» is an intended misspelled version of the ARLA and ARLA FOODS trademarks. The ARLA and ARLA FOODS trademarks are clearly recognizable in the Disputed Domain Name. As previously held, the “insertion of a letter in the disputed domain name between ‘arla’ and ‘foods’ does not dispel the confusing similarity of the disputed domain name to the Complainant's marks, and is strongly evocative of typosquatting” (see *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. D2016-2213). Previous UDRP panels have stated in this regard that “minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name” (see *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. D2015-1679).

Moreover, previous UDRP panels have constantly held that the mere addition of a descriptive term – such as “foods” – would not prevent a finding of confusing similarity to a trademark (see *Minerva S.A. v. Domain Administrator, Fast Serv Inc. d.b.a. QHoster.com*, WIPO Case No. D2019-2767 and *Bouygues Travaux Publics v. Christian Gazon*, CAC Case No. 101690).

Furthermore, the generic Top-Level Domain “.com” in the second-level portion is a standard registration requirement and should be disregarded when assessing whether a domain name is confusingly similar to the trademark in which the Complainant has rights (see, *Arcelormittal S.A v. James*, supra and *Credit Mutuel Arkea v. Domain Administration*, CAC Case No. 102345).

The Disputed Domain Name is therefore confusingly similar to the Complainant’s trademarks ARLA and ARLA FOODS.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;

The Disputed Domain Name was registered on April 11, 2022, many years after the first registrations of the Complainant’s ARLA and ARLA FOODS trademarks.

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 known by the Disputed Domain Name or owns any corresponding registered trademark including the terms “arlrafoods.com”.

When conducting the search regarding the term “arlrafoods.com” or “arlrafoods” on popular Internet search engines such as “Google.com”, the vast majority of the returned results relate to the Complainant, their official websites and also third parties’ websites – directly referring to the Complainant’s products.

When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms “arlrafoods.com”, “arlrafoods” nor any trademarks found registered in the name of the Respondent – Xong Vang.

When conducting the search by the name of the Respondent “Xong Vang” or e-mail of the Respondent <xong.vang@bestviewcare.com> in combination with the terms of the Disputed Domain Name “arlrafoods.com” there are no returned results showing that the Respondent is in any way known by the Disputed Domain Name.

At the time the Complainant found out about the disputed domain name and send Cease and Desist Letter (May 2022) it was resolving to Pay Per Click Page displaying links such as: “Health Supplements”, “Health Products” and other therefore links related to the field where Complainant is operating.

The Respondent has therefore no rights or legitimate interests in respect of the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

The Respondent registered the Disputed Domain Name many years after the first registrations of the Complainant’s ARLA trademarks and ARLA FOODS trademark. The ARLA trademark is a widely known trademark, as previously held by UDRP panels (see *Arla Foods Amba v. Fredrik Enghall*, WIPO Case No. D2016-1205 and *Arla Foods Amba v. Nashan*, CAC Case No. 101486), registered in many countries and the Complainant enjoys a strong online presence. The Complainant is also very active on social media (Facebook and Twitter) to promote its mark, products and services. The Complainant is followed by 1,257,478 people on Facebook and 16,1K people on Twitter and 10.3.K on Instagram (see *Laboratoires M&L v. Zhaoxingming*, CAC Case No. 102277).

## Use of the Domain Name in bad faith

Firstly, the Disputed Domain Name incorporates the misspelled form Complainant's well-known trademark ARLA as well as typo of the trademark ARLA FOODS and trade name of the Complainant. WIPO Overview 3.0 para. 3.1.4 states that "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."

Secondly, as noted previously, at the time the Complainant found out about the disputed domain name and send Cease and Desist Letter (May 2022) it was resolving to Pay Per Click Page displaying links such as: "Health Supplements", "Health Products" and other, therefore links related to the field where Complainant is operating.

PPC pages aim at generating revenues by diverting Internet traffic to sponsored links. PPC pages generate revenues when Internet users click on the links displayed on the page. Where such links are based on trademark value, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion" (see Camilla Australia Pty Ltd v. Domain Admin, Mrs Jello, LLC, WIPO Case No. D2015-1593).

At the time of filling of this Complaint the Disputed Domain Name does not resolve to an active website. It is provided in WIPO Overview 3.0 para 3.3 that "from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding".

Previously panels stated the following: "The Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly refers to the Complainant's trademark may constitute registration and use in bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003)

Thirdly, the Complainant tried to contact the Respondent on May 24, 2022 through a cease-and-desist letter. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of their trademarks within the Disputed Domain Name violated their trademark rights and the Complainant requested a voluntary transfer of the Disputed Domain Name. The Respondent chose not to reply to the cease and desist letters sent by the Complainant which infers bad faith (see International Business Machines Corporation v. Adam Stevenson, Global Domain Services, WIPO case No. D2016-1695; Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo, WIPO Case No. D2018-2201).

In view of the above, the Complainant registered and used the Disputed Domain Name in bad faith and its conduct falls within the meaning of Paragraph 4(a)(iii) of the Policy.

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### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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### 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).

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### 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).

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### 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).

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### 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.

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PRINCIPAL REASONS FOR THE DECISION

The Panel is satisfied with any of the grounds and arguments put forward by the Complainant showing this is a typical case of typosquatting, as affirmed by settled UDRP case-law also in respect of Complainant's rights which have been misspelled on purpose in the Domain Name in order to capitalize on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, the Complainant on Internet. It confirms that the term «arlra» is an intended misspelled version of the ARLA and ARLA FOODS trademarks. The ARLA and ARLA FOODS trademarks are clearly recognizable in the Disputed Domain Name. As previously held, the "insertion of a letter in the disputed domain name between 'arla' and 'foods' does not dispel the confusing similarity of the disputed domain name to the Complainant's marks, and is strongly evocative of typosquatting" (see Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions, WIPO Case No. D2016-2213). Previous UDRP panels have stated in this regard that "minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name" (see LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679). Complainant's trademarks enjoy of a strong market recognition, also due the intense usage of the corresponding domain names, to dispel any doubt the Dispute Domain Name has been registered and used in bad faith.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALRLAFOODS.COM**: Transferred
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**PANELLISTS**

Name	<b>Roberto Manno</b>
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DATE OF PANEL DECISION 2022-08-09

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Publish the Decision

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