

Decision for dispute CAC-UDRP-104901

Case number CAC-UDRP-104901

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Domain names arlofoods.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Arla Foods amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Organization Colored Srl

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 numerous trademark registrations for ARLA, such as but not limited to:

- International trademark ARLA No. 731917, registered on March 20, 2000, designating China;
- International trademark ARLA No. 990596, registered on September 8, 2008 designating China;
- UK trademark registration ARLA No. UK00002413775 registered on August 4, 2006;
- EU Trademark Registration ARLA No. 018031231 registered on September 6, 2019; and
- Denmark trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000.

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.

FACTUAL BACKGROUND

The Complainant 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 11,2 billion for the year 2021.

Complainant states that its products are 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 brands ARLA, LURPAK, CASTELLO, APETINA and others.

The Complainant owns numerous ARLA trademarks registered many years before the Disputed Domain Name, which was created on August 10, 2022.

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

The ARLA and ARLA FOODS trademarks are spelled with the letter "o" instead of letter "a" in the term "ARLA" in the Disputed Domain Name.

Complainant states that this is a typosquatting situation: the Complainant's trademarks have been misspelled on purpose in the Disputed 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.

Complainant therefore states, that the Disputed Domain Name is confusingly similar to the Complainant's trademarks ARLA and ARLA FOODS.

The Complainant further states, that he 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 also no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademark including the terms "arlofoods" or "arlo foods":

Complainant contents, that when conducting a search regarding the term "arlofoods.com" on popular Internet search engines such as "Google.com" all the top results relate to the Complainant's, its official websites and also third parties' websites – directly referring to the Complainant.

When conducting the search with the name of the Respondent "Colored Srl" along with the terms "arlofoods.com" there are no relevant results showing that the Respondent is commonly known by the Disputed Domain Name.

When conducting searches on online trademark databases, no information is found in relation with trademarks corresponding to the terms "arlofoods or arlo foods".

The Complainant states, that the Disputed Domain Name has been used via the e-mail function in order to conduct email phishing scheme. The Respondent created an email address associated to the Disputed Domain Name <caman@arlofoods.com> and used it for fraudulent purposes. Namely, on August 10, 2022 an e-mail impersonating Complainant's Logistic Coordinator with genuine e-mail address <caman@arlafoods.com> was sent to one of the Complainant's customer from the e-mail address associated to the Disputed Domain Name <caman@arlofoods.com> and signed off with the name of the officer of the Complainant. The e-mail was informing customer on "change of IBAN details" which were attached to the e-mail and asking the customer to change the records and direct all future payments to the new bank details. The Respondent copied another e-mail addresses created from the Disputed Domain Name and impersonating employees of the Complainant (e.g. <makrd@arlofoods.com>, <jeplu@arlofoods.com>) in order to deceive the recipients by giving the overall impression that the e-mail is genuinely coming from the Complainant.

The Complainant and its customer realized that they were facing a fraud. In order to prevent such very harmful phishing scheme to spread and continue, the Complainant filed a takedown action before the Registrar on September 16, 2022 and received confirmation from the Registrar that the Disputed Domain Name was suspended.

Furthermore, Complainant states that it appears that the Disputed Domain Name has not been resolving to any active web page.

It shows in the view of Complainant that the Disputed Domain Name has not been used for any other purposes and ways than to perpetrate a phishing scheme. The Disputed Domain Name has therefore not been used in any ways in connection with a bona fide offering of goods and services.

Moreover, the Respondent's identity is not disclosed on the publicly available Registrar's WHOIS regarding the Disputed Domain Name. The Respondent is using a privacy shield. Hence, the Respondent is most likely aiming at hiding its identity rather than being known by the Disputed Domain Name.

The Respondent registered the Disputed Domain Name many years after the first registrations of the Complainant's ARLA and ARLA FOODS trademarks. The ARLA trademark is a widely known trademark, as previously held by UDRP Panels, registered in many countries. The Complainant states that he is also very active on social media (Facebook and Twitter) to promote its mark, products and services. The Complainant is followed by 1,192,118 people on Facebook and 1,762 people on Twitter.

Complainant states, that by conducting a simple online search regarding the terms "arlofoods.com", the Respondent would have inevitably learnt about the Complainant, its trademark and business. Further, the Disputed Domain Name incorporates a misspelled

version of the Complainant's ARLA trademark, by replacing the letter "a" with the letter "o" in ARLA trademark. The intent of the Respondent was in the view of Complainant to capitalize on the customer's error to perpetrate fraudulent act. This fact shows in the view of Complainant that the Respondent had the Complainant and its trademark in mind at the time it registered the Disputed Domain Name.

Complainant furthermore states, that the Respondent initiated correspondence by using the identity of one of the Complainant's employee in order to deceive Complainant's customer and provide them with the false bank details. The fraudulent email was sent on August 10, 2022. Thus, the fraud happened the same day the Disputed Domain Name was registered. These facts clearly demonstrate in the view of Complainant that the Respondent did not act randomly but knew the Complainant and its trademark when it undertook such fraudulent manoeuvre.

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

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

The Complainant demonstrated that it owns the asserted trademark registrations for the word marks "ARLA" and "ARLA FOODS" which were registered long before the registration of the Disputed Domain Name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix ".com" may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The Disputed 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 spelled with the letter "o" instead of letter "a" in the term "ARLA" in the Disputed Domain Name. The ARLA and ARLA FOODS trademarks are clearly recognizable in the Disputed Domain Name.

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 Gazaigues*, CAC Case No. 101690).

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

LACK OF RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademarks for its commercial activities. In addition, the Respondent is not commonly known by the Disputed Domain Name pursuant to Paragraph 4(c)(ii) of the Policy.

Considering the facts of this case, it seems obvious to the Panel that the Respondent knew (or should have known) about the Complainant and its trademarks when it registered the Disputed Domain Name.

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the Disputed Domain Name.

REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Disputed Domain Name incorporates a misspelled version of the Complainant's ARLA trademark, by replacing the letter "a" with the letter "o" in the ARLA trademark. The intent of the Respondent was in the view of the Panel to capitalize on the customer's error to perpetrate fraudulent act. This fact shows that the Respondent had the Complainant and its trademark in mind at the time it registered the Disputed Domain Name.

The Panel agrees with Complainant, that it is a typosquatting situation: the Complainant's trademarks have been misspelled on purpose in the Disputed 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.

The term «arlo» is an intended misspelled version of the ARLA and ARLA FOODS trademarks.

Finally, the Respondent initiated correspondence by using the identity of one of the Complainant's employee in order to deceive Complainant's customer and provide them with the false bank details. The fraudulent email was sent on August 10, 2022.

Thus, the fraud happened the same day the Disputed Domain Name was registered. These facts clearly demonstrate that the Respondent did not act randomly but knew the Complainant and its trademark when it undertook such fraudulent manoeuvre.

Therefore, the Respondent knew the Complainant's trademark at the time it registered the Disputed Domain Name and registered it in bad faith.

The Complainant provided information that the Disputed Domain Name has been used via the e-mail function in order to conduct email phishing scheme. The Respondent created an email address associated to the Disputed Domain Name <caman@arlofoods.com> and used it for fraudulent purposes. Namely, on August 10, 2022 an e-mail impersonating Complainant's Logistic Coordinator with genuine e-mail address <caman@arlafoods.com> was sent to one of the Complainant's customer from the e-mail address associated to the Disputed Domain Name <caman@arlofoods.com> and signed off with the name of the officer of the Complainant. The e-mail was informing customer on "change of IBAN details" which were attached to the e-mail and asking the customer to change the records and direct all future payments to the new bank details. The Respondent copied another e-mail addresses created from the Disputed Domain Name and impersonating employees of the Complainant (e.g. <makrd@arlofoods.com>, <jeplu@arlofoods.com>) in order to deceive the recipients by giving the overall impression that the e-mail is genuinely coming from the Complainant.

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 also SAP SE v. Anuluwapo Akobi, WIPO Case No. D2018-0624; Pepsico, Inc. v. Bill Williamson, supra).

Respondent has furthermore been using privacy shield to conceal its identity. The Panel considers such behaviour as for the purpose to hide the registrant's identity, which contributes to the proof of bad faith.

In view of the above, the Respondent 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.

Therefore, the Panel holds that the Disputed Domain Name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. arlofoods.com: Transferred

PANELLISTS

Name	Jan Schnedler
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DATE OF PANEL DECISION 2022-11-04

Publish the Decision
