

Decision for dispute CAC-UDRP-104985

Case number CAC-UDRP-104985

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Domain names arlafods.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Arla Foods Amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Organization Comex Virginia

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 the following trademarks:

- International Registration ARLA with no. 731917, registered March 20, 2000, for goods and services in classes 1, 5, 29, 30, 31, 32, designating many jurisdictions including the United States;
- International trademark ARLA (figurative) with no. 990596, registered on September 8, 2008, for goods and services in classes 1, 5, 29, 30, 31, 32, designating many jurisdictions including the United States;
- EU Trademark Registration ARLA with no. 018031231 registered on September 6, 2019 for goods and services in classes 1, 5, 9, 16, 29, 30, 31, 32, 25, 29, 41, 42, 44 and 45;
- Danish trademark ARLA FOODS with no. VR 2000 01185, registered on March 6, 2000, for goods and services in classes 1, 5, 29, 30, 31, 32; and
- United States trademark ARLA with no. 3325019, registered on October 30, 2007, for goods and services in classes 1 and 29.

FACTUAL BACKGROUND

The Complainant was constituted as a Danish-Swedish merger in 2000 and is the fifth-largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. The Complainant employs 119,190 people across 105 countries and reached a global revenue of EUR 11,2 billion for the year 2021. The Complainant has a very strong presence in the United States market

where it operates via a subsidiary. The Complainant produces their products in the United States via its own dairy plant where more than 100 people are currently employed.

The disputed domain name was registered on August 3, 2022 and does not resolve to any active page.

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

The Respondent did not reply to the Complainant's contentions. However, the consensus view of UDRP panels is that the Respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from a respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are not such exceptional circumstances.

The Panel finds that the disputed domain name is confusingly similar to the ARLA FOODS trademark identified above, as the disputed domain name contains the trademark in its entirety, while the absent "o" is insignificant to the overall impression. The disputed domain name is also confusingly similar to the ARLA trademarks identified above, as the addition of the term "FODS" does not take away the confusion. The fact that the additional term "fods" should actually be "foods" is caused by a typographical error, but is in all circumstances irrelevant to take away likelihood of confusion (e.g. ALDI GmbH & Co. KG v. Sadettin Kucuk, WIPO Case No. D2014-0953).

The Complainant has contended that the Respondent has neither 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. The Panel also notes the composition of the disputed domain name naturally leads to an inference of connection with the Complainant. The Panel finds that the Complainant has made out a prima facie case, calling for an answer from the Respondent. The Respondent has, however, not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the intentionally confusingly similar disputed domain name. The Panel accordingly finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Many previous panels have found the ARLA trademark to be well-known (e.g., Arla Foods Amba v. Nashan, CAC Case No. 101486,

Arla Foods Amba v. Sonia Rubio, CAC Case No. 103066 and Arla foods Amba v. RegC, Adoum Hamid Ibrahim, CAC Case No. 103779), and the Panel in the current dispute has no reason to doubt such finding of the ARLA trademark being well-known. The fact that the Respondent has included the ARLA trademark in its entirety and added the term "fods" in the creation of the disputed domain name, while the Complainant owns and has been using the ARLA FOODS trademark and trade name intensively, leads the Panel to believe that term "fods" was an intentional misspelling of "foods," and the Respondent was or must have been aware of the ARLA trademark when registering the disputed domain name. The Panel is therefore satisfied that the disputed domain name was registered in bad faith.

The Complainant must also prove that the Respondent uses the disputed domain name in bad faith. Under the circumstances at hand, the Panel finds that the passive holding of the disputed domain name constitutes use in bad faith. Section 3.3 of the WIPO Overview 3.0 states the following on this issue: "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. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." In this case, the Panel concludes that the following cumulative circumstances are indicative of the Respondent's passive holding of the disputed domain name in bad faith: (i) the fact that the ARLA mark is well-known, and that the Respondent is found to have likely had the ARLA and/or ARLA FOODS trademarks in mind when it registered the disputed domain name; (ii) the similarity between the intensively used trade name "Arla Foods" by the Complainant and the disputed domain name; (iii) the lack of a response from the Respondent to the Complainant's demand letter; and (iv) the lack of a Response in the current procedure.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. arlafods.com: Transferred

PANELLISTS

Name	Alfred Meijboom
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DATE OF PANEL DECISION 2022-12-11

Publish the Decision
