

Decision for dispute CAC-UDRP-105606

Case number CAC-UDRP-105606

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Domain names arlamorethanmilk.com

Case administrator

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

Complainant

Organization Arla Foods Amba

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Cenk Erdogan

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 (thereafter the "Complainant's trademark"), such as but not limited to:

- International trademark ARLA No. 731917, registered on March 20, 2000, designating Turkey;
- International trademark ARLA No. 990596, registered on September 8, 2008;
- EU TM ARLA No. 018031231 registered on September 6, 2019;
- Denmark trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000;
- EU trademark registration for ARLA MORE THAN MILK application number 018855273 filed March 2023.

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

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 11,2 billion for the year 2021.

Arla Food'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 media and its own podcast "More than Milk". Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world.

PARTIES CONTENTIONS

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

(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® trademarks registered many years before the disputed domain name <arlamorethanmilk.com> was created (on March 29, 2023). Moreover, the disputed domain name was registered the same day the Complainant filed EU TM application ARLA MORE THAN MILK® No. 018855273.

The disputed domain name incorporates, in its second-level portion, Complainant's trademarks ARLA® entirely with the addition of the term "more than milk" directly related to not only advertising by the Complainant, but furthermore, the term also directly pertains to the business of the complainant, a dairy company that specializes in producing and selling milk and other dairy products. The disputed domain name also incorporates in its entirety the Complainant's EU trademark application ARLA MORE THAN MILK® No. 018855273.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") 3.0 para. 1.8 states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements".

The ARLA® and ARLA MORE THAN MILK trademarks are clearly recognizable within the disputed domain name. Previous UDRP panels have constantly held that the mere addition of a descriptive term 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 panels have also held that: "The addition of a generic word like "shop" to a trademark with or without hyphen does not prevent the confusing similarity that exists between the disputed domain name and the Complainant's trademark...." This is particularly the case here where the generic word describes an important activity of the Complainant.". See *Auchan Holding SA v. WhoisGuard Protected, WhoisGuard, Inc. / Privacy service provided by Withheld for Privacy ehf / Professeur Sam Lami*, WIPO Case No. D2021-0985.

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).

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name;

The disputed domain name was registered on March 29 2023, many years after the first registration of the Complainant's ARLA® trademark. Moreover, as previously mentioned, the disputed domain name was registered the same day the Complainant filed EU TM application ARLA MORE THAN MILK® No. 018855273.

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent any rights to use the ARLA® trademark in any form, including in the disputed domain name.

There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks including the terms “arlamorethanmilk.com” or “arla more than milk”:

- When conducting the search regarding the terms “arlamorethanmilk.com” or “arla more than milk” on popular Internet search engines such as “Google.com” all the top results relate to the Complainant’s and their UK marketing campaign and podcast.
- When searching for the name of the Respondent as disclosed by the Registrar Verification “Cenk Erdogan” along with the terms of the disputed domain name there are no relevant results showing that the Respondent is 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 “arlamorethanmilk.com” or “arla more than milk” other than the trademarks of the Complainant;
- When conducting searches regarding any trademarks owned by the Respondent - Cenk Erdogan, there are no results showing that the Respondent owns any trademarks.

The Respondent should have already performed a similar search before registering the disputed domain name and should have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in many countries worldwide.

Moreover, the structure of the disputed domain name – incorporating in its second level portion the ARLA trademark entirely along with the term “more than milk” – reflects the Respondent’s intention to create an association, and a subsequent likelihood of confusion in Internet users’ mind. The use of the term “ARLA More Than Milk” is a deliberate attempt by the Respondent to create a false association with the Complainant and confuse consumers. This misleading tactic may lead consumers to believe that the Respondent’s business is affiliated with or endorsed by the Complainant potentially influencing their purchasing decisions. Such actions are intended to exploit the trust and recognition associated with the reputable brand for the Respondent’s own benefit. The disputed domain name in its structure directly refers to the Complainant, its trademark, marketing campaigns business.

In addition, by reading the disputed domain name, Internet users may believe that it is directly connected or authorized by the Complainant and that the disputed domain name will resolve to the Complainant’s official website, which is not the case. In accordance with previous UDRP panel decisions and as indicated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”), section 2.5, “a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner”. In the present case, the Respondent has aimed at making Internet users believe that the disputed domain name is directly linked to, or operated by, the Complainant. In similar circumstances, it has been held that “the nature of the disputed domain name carries a risk of implied affiliation” (see Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Murat Sander, WIPO Case No. D2021-0526).

It therefore appears that the Respondent deliberately chose to use the well-known trademark ARLA as the main part of the disputed domain name to benefit from the Complainant’s worldwide renown trademark and to confuse Internet users as to the source or sponsorship and therefore cannot be considered as a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

At the time the Complainant found out about the disputed domain name and sent the cease-and-desist letter (May 2023) the disputed domain name resolved to a parked page at Dynadot, offering the disputed domain name for sale for USD 4,995.

At the time of filing of the complaint the disputed domain name resolved to a parked page at Dynadot displaying a link for the purchase of the disputed domain name for USD 4,449, according to the Complainant an exorbitant amount.

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” (see Bollore v. Tywonina W Hill, WIPO Case No. DCO2017-0012).

The Complainant tried to reach the Respondent by sending cease and desist letter on May 15, 2023 via abuse contact of the Registrar as well as via using on-line form provided by the Registrar to contact the registrant. There was no response from the Respondent. The Respondent has been granted the opportunity to present some compelling arguments that it has rights or legitimate interests in the disputed domain name but has failed to do so. This behavior coupled with the absence of use of the disputed domain name in connection with a bona fide offering of goods and services further demonstrate the Respondent's absence of 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;

- Registration of the disputed domain name in bad faith

The Respondent registered the disputed domain name many years after the first registration of the Complainant's ARLA trademarks. 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. Nshan*, CAC Case No. 101486), registered in many countries – including in Turkey where the Respondent seems to be located 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 1,258,083 people on Facebook and 1,762 people on Twitter (See, *Laboratoires M&L v. Zhaoxingming*, CAC Case No. 102277).

By conducting a simple online search regarding the terms "arlamorethanmilk.com", the Respondent would have inevitably learnt about the Complainant, its trademark and business (see *Intesa Sanpaolo S.p.A. v. Abayomi Ajilaye*, CAC Case No. 102396).

The disputed domain name incorporates, in its second-level portion, Complainant's trademarks ARLA® with addition of the descriptive term "more than milk". It is important to note that the combination of terms "Arla More Than Milk" has been actively used by the Complainant in their advertisements, moreover, there is a popular podcast called "Arla More Than Milk" operated by the Complainant. Furthermore, as mentioned, the Complainant also filed EU TM registration for Arla More Than Milk for their podcasts, under No. 018855273. Such trademark application was filed the same day the disputed domain name was registered (March 29, 2023), which also indicates deliberate attempt of the Respondent to exploit the trademarks of the Complainant. Incorporating such unique combination of terms can in no way be a coincidence, it reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trademark in Internet users' mind.

It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when he registered the disputed domain name.

In addition, WIPO Jurisprudential Overview 3.0., paragraph 3.1.4 states: "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."

- Use of the disputed domain name in bad faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which shall be evidence of the registration and use of a domain name in bad faith. Among those circumstances Paragraph 4(b)(iv) of the Policy reads "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the disputed domain name in "bad faith": (i) circumstances indicating that Respondent has registered or has acquired the Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Domain Names registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Names.

As mentioned previously the disputed domain name has been resolving to parked page at Dynadot offering the disputed domain name for sale at the amount of USD 4,995 or USD 4,449.

The amount requested for purchasing the disputed domain name is in excess of the documented out-of-pocket costs directly related to the disputed domain name and clearly indicates the Respondent's intention to exploit the Complainant's trademark in

order to obtain profit.

Circumstances, alone or together, include:

- the Respondent's likely knowledge of the complainant's rights – as previously mentioned, such unique combination of terms directly referring to the Complainant can in no way be a coincidence, the Respondent knew about the Complainant, their business and their podcasts called "Arla More Than Milk". The disputed domain name was registered the same day the Complainant filed EU TM registration for ARLA MORE THAN MILK which clearly indicates that the Respondent knew about potential rights;
- the distinctiveness of the complainant's mark – ARLA is a distinctive well-known trademark of the Complainant
- threats to "sell to the highest bidder" or otherwise transfer the disputed domain name to a third party – the disputed domain name resolves to page offering the same for sale to any third party at the amount of USD 4,449.
- failure of the Respondent to present a credible evidence-backed rationale for registering the disputed domain name – as previously mentioned, the Complainant tried to reach the Respondent on May 15, 2023, through a cease-and-desist letter regarding the disputed domain name. The Respondent chose not to reply to the cease-and-desist letters sent by the Complainant which infers bad faith.

Also, previously the Panels have held: "As regards bad faith use, the Domain Name is being offered for sale for an amount that likely exceeds the acquisition price paid by Respondent. Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Name in bad faith" (Nitro Games Oyj v. Domain Sales, WIPO Case No. D2023-1829).

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).

It is well established that the specific top level of a domain name such as ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar. Neither does the mere addition of generic terms like in this case "morethanmilk" when seen in combination with the trademark ARLA. Therefore, the disputed domain name is confusingly similar to the Complainant's trademark ARLA.

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 contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Panel did not find any other use of the disputed domain name other than an attempt to sell the domain name for a sum highly exceeding out-of-pocket costs connected with the registration of the disputed domain name.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark ARLA and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances finds that the Respondent registered the disputed domain name with prior knowledge of the Complainant and the Complainant's mark.

The Panel also notes the timing of the registration of the disputed domain name, which coincides with the date of filing of the trademark applications for ARLA MORE THAN MILK by the Complainant. The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to a parked page at Dynadot displaying a link for the purchase of the disputed domain name for USD 4,449, a clearly exorbitant amount. The Panel finds that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling its registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. The Panel finds that these circumstances are evidence of the use of the disputed domain name in "bad faith".

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is fully incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. The disputed domain name currently resolves to a parked page at Dynadot displaying a link for the purchase of the disputed domain name for USD 4,449, a clearly exorbitant amount. The Panel finds that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling its registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **arlamorethanmilk.com**: Transferred

PANELLISTS

Name **Lars Karnoe**

DATE OF PANEL DECISION **2023-08-22**

Publish the Decision
