

Decision for dispute CAC-UDRP-105714

Case number **CAC-UDRP-105714**

Time of filing **2023-08-21 10:07:17**

Domain names **arlapro.xyz**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Arla Foods Amba**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **Rebecca Henry**

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 and ARLA PRO. Including but not limited to:

US Trademark ARLA No. 3325019, registered on October 30, 2007;
EU Trademark ARLA No. 001520899, registered on May 7, 2001;
EU Trademark ARLA (figurative) 009012981, registered on September 9, 2010;
International trademark ARLA No. 731917, registered on March 20, 2000;
International trademark ARLA (figurative) 990596, registered on September 8, 2008;
EU Trademark ARLA PRO No. 018686542, registered on August 27, 2022.

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 which it evidences by an excerpt of "Consolidated Annual Report 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.

Furthermore, the Complainant is also known in connection with its dedicated foodservice business “Arla Pro”, committed to catering to the different needs of chefs, bakers, and kitchen professionals all around the world with its wide range of dairy ingredients.

Arla Foods also enjoys a local presence in the United States, the country where the Respondent is allegedly located according to the Registrar Verification , where it has an established presence since 2007. The Complainant also enjoys a strong online presence via its official website and social media. 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

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT: RESPONDENT:

The Complainant states that the Respondent registered <arlapro.xyz> (the “Disputed Domain Name”) on February 1, 2023 and it resolves to a website that advertises it for sale. The Disputed Domain Name is identical to Complainant's ARLA® and ARLA PRO® trademarks (the “ARLA Marks”). The Complainant contends that it has no business relationship with Respondent, did not authorize it to register the Disputed Domain Name, and states that the Respondent is in violation of the Policy.

The Respondent registered the Disputed Domain Name many years after the first registration of Complainant's ARLA Marks. 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), and is registered in many countries, including in the United States where the Respondent appears to be located. The Complainant also enjoys a strong online presence and is very active on social media (Facebook and Twitter) to promote its mark, products and services.

Complainant argues that the registration and passive holding of the Disputed Domain Name is opportunistic and any contention otherwise would be condemned as wilful blindness

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the 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 domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Czech Arbitration Court has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case and defend its registration of the Disputed Domain Name.

By the Rules, paragraph 5(c)(i), respondent is expected to: "Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..." Notwithstanding Respondent's default Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, Sec. 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true." However, if a complainant's adduced evidence supports any element of the Policy, a respondent has an opportunity to contest the contention that its registration of the challenged domain name was unlawful.

A. The Disputed Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights.

This first limb of the Policy requires Complainant to prove that it has a trademark right and that the Disputed Domain Name is identical or confusingly similar to that mark. The Panel finds that Complainant has demonstrated that it has a registered trademark right to the term ARLA PRO. Having established that element of the Policy the next question is whether the Disputed Domain Name is identical or confusingly similar to Complainant's mark. A side-by-side comparison of the Disputed Domain Name and the ARLA PRO trademark demonstrates that <arlapro.xyz> is confusingly similar to the mark in that it entirely incorporates Complainant's trademark.

At the threshold it is necessary only to consider "whether a domain name is similar enough in light of the purpose of the Policy to justify moving on to the other elements of a claim for cancellation or transfer of a domain name." The Panel in *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, D2000-1415 (WIPO January 23, 2001) notes that "numerous prior panels have held [the purposes of the Policy are satisfied] when a domain name wholly incorporates a complainant's registered mark." Similarly, *Magnum Piering, Inc. v The Mudjackers and Garwood S. Wilson, Sr.*, D2000-1525 (WIPO January 21, 2001). Panelists generally disregard the top-level suffixes as functional necessities, thus the top-level extension is irrelevant in determining the issue under the first requirement of the Policy. With respect to the hyphen, the Panel in *CAC Case No. 102161* explained that "it is well established that hyphens [. . .] may be disregarded when considering whether the disputed domain names are confusingly similar to the trademark in which the Complainant has rights."

The generic Top-Level Domain ".xyz" in the first level portion of the Disputed Domain Name is a standard registration requirement and should be disregarded when assessing whether a Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights (see *Credit Mutuel Arkea v. Domain Administration*, CAC Case No. 102345).

Accordingly, having demonstrated that <arlapro.xyz> is confusingly similar to Complainant's ARLA and ARLA PRO trademarks the Panel finds Complainant has satisfied Para. 4(a)(i) of the Policy.

B. Rights and legitimate interests, Para. 4(a)(ii)

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the disputed domain name, but this burden is light. It is sufficient in the first instance for Complainant to allege a prima facie case, and if the evidence presented is persuasive or yields a positive inference that Respondent lacks rights or legitimate interests, the burden shifts to Respondent to rebut the allegations. This concept of shifting burdens is clearly explained in *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, D2003-0455 (WIPO August 21, 2003) in which the Panel held that "[s]ince it is difficult to prove a negative [. . .] especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests—and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light."

Once the complainant makes such prima facie showing, "the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP," *Malayan Banking Berhad v. Beauty, Success & Truth International*, D2008-1393 (December 8, 2008). Finally, "in the absence of direct evidence, complainant and the panel must resort to reasonable inferences from whatever evidence is in the record," *Euromarket Designs, Inc. v. Domain For Sale VMI*, D2000-1195 (WIPO October 26, 2000).

The Complainant contends and the evidence supports the conclusion that Respondent lacks rights or legitimate interests in the Disputed Domain Name. It has not granted any rights to Respondent to use the ARLA PRO trademark, nor is "Rebecca Henry" known by the name of Disputed Domain Name. See *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group*, FA1804001781783 (Forum May 11, 2018) ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name"); *Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy*, FA 1741129 (FORUM August 16, 2017) (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

Once the burden shifts, Respondent has the opportunity of demonstrating its right or legitimate interest by showing the existence of any of the following nonexclusive circumstances:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the respondent must succeed. However, where respondent fails to respond, the Panel must assess the record before it. Here, the choice of the domain names corresponds to the trademark. Therefore, Respondent's default and its failure to rebut Complainant's evidence is particularly telling. Since there is no proof otherwise, the record supports the conclusion that Respondent lacks any right or legitimate interest as measured by the three circumstances of paragraph 4(c). See *Deutsche Telekom AG v. Britt Cordon*, D2004-0487 (WIPO September 13, 2004) (holding that "once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP). Similarly, in *Malayan Banking Berhad*, supra. (holding that "[i]f the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.").

Although Respondent has been granted an opportunity to present some compelling arguments that they have rights or legitimate interests in the Disputed Domain Name it has failed to make an appearance. This behavior, coupled with the absence of use of the Domain Names in connection with a bona fide offering of goods and services (it resolves to a webpage offering the Disputed Domain Name for sale), as well as the fact that the domain name incorporates, in its second level portion, the Complainant's widely known trademarks ARLA® and/or ARLA PRO®, clearly demonstrate the Respondents' absence of rights or legitimate interests in respect to the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name. Thus, Complainant has satisfied Paragraph §4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith, §4(a)(iii)

Having determined that Respondent lacks rights or legitimate interests, the Complainant must then prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith. The consensus expressed in WIPO Overview 3.0, section 3.1.4. is that "the mere registration of a domain name that is identical or confusingly similar [. . .] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." Particularly probative in this case is that Complainant holds the domain name <arla.com> (registered on July 15, 1996). Absent a cogent explanation from Respondent justifying its choice of domain name, this supports the conclusion that it registered <arlapro.xyz> with the purpose of taking advantage of the goodwill and reputation accruing to its trademark. Whatever value that Disputed Domain Name may have been directly related to the goodwill Complainant has established in the international marketplace.

Moreover, the structure of the Disputed Domain Name – incorporating in its second level portion the Complainant's trademarks ARLA® along with the relevant term "pro", thus making a direct association to the Complainant and its business, and the ARLA PRO® trademark in its entirety – reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, in Internet users' mind. Indeed, the Disputed Domain Name in its structure directly refers to the Complainant and its trademarks. The use of the Complainant's trademarks in the second level portion of the Disputed Domain Name is a deliberate attempt by the respondent to create a false association and confuse consumers.

The Panel agrees with the Complainant that by incorporating its trademarks in the Disputed Domain Name, the Respondent is targeting it to capitalize on Complainant's established reputation and goodwill and this dishonest tactic may lead consumers to believe that the Disputed Domain Name is affiliated with or operated by the Complainant. Such actions are clearly intended to exploit the trust and recognition associated with the reputable brand for the Respondent's own benefit.

Paragraph 4(b) of the Policy sets out four nonexclusive circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. Of the four nonexclusive circumstances, paragraph 4(b)(iv) most readily applies:

- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

Respondent's registration of the Disputed Domain Name is clearly intended to attract Internet users and as it reproduces Complainant's official website it is clearly intended to trick consumers and customers into believing that it is, in fact, Complainant. See *Auchan Holding SA v. WhoisGuard Protected / WhoisGuard, Inc. / Daniel Morgan*, WIPO Case No. D2021-0797 ("The evidence outlined above that the Respondent is falsely suggesting he is connected and/or authorised by the Complainant in order to gather personal information for phishing purposes is evidence that the Respondent has acted in opposition to the Complainant's commercial interests and has unduly

disrupted the business of the Complainant.”).

Where the facts demonstrate an intent to capitalize on an owner's mark and has targeted it in the manner in which Complainant describes and which is supported by proof in the record, the registration is prima facie abusive. Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, D2019-2803 (WIPO February 23, 2020) (<investease.com>. "It is clear that where the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's nascent . . . trademark, panels have been prepared to find the respondent acted in bad faith."). WIPO Overview 3.0, Sec. 3.3: "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 . . . to provide any evidence of actual or contemplated good-faith use, . . . and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel finds that the Complainant has adduced evidence that the Respondent registered and is using the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct. The Panel finds that Complainant has adduced more than sufficient evidence to prove Respondent's bad faith based on the foregoing considerations.

The evidence of record in this case supports Complainant's prima facie case. Accordingly, as Respondent has failed to adduce any evidence justifying its acquisition of the Disputed Domain Name, the Panel finds that it registered and is using <arlapro.xyz> the Disputed Domain Name in bad faith and that its conduct firmly supports the conclusion that the registration of the Disputed Domain Name was abusive. It is a case in which the presumption of bad faith is satisfied.

Accordingly, having thus demonstrated that Respondent registered and is using the Disputed Domain Name in bad faith, Complainant has also satisfied paragraph4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **arlapro.xyz**: Transferred

PANELLISTS

Name	Gerald Levine Ph.D, Esq.
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DATE OF PANEL DECISION	2023-09-26
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Publish the Decision