

## Decision for dispute CAC-UDRP-105726

Case number **CAC-UDRP-105726**

Time of filing **2023-08-22 09:47:39**

Domain names **arlafoodsme.com**

### Case administrator

Name **Olga Dvořáková (Case admin)**

### Complainant

Organization **Arla Foods Amba**

### Complainant representative

Organization **BRANDIT GmbH**

### Respondent

Name **Arla Me**

#### OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <arlafoodsme.com> ('the disputed domain name').

#### IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- International trade mark registration no. 731917, designating, inter alia, the Kingdom of Bahrain, registered on 20 March 2000, for the mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification;
- International trade mark registration no. 990596, designating, inter alia, the Kingdom of Bahrain, registered on 8 September 2008, for the figurative mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification;
- EU trade mark registration no. 001520899, registered on 7 May 2001, for the word mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification;
- EU trade mark registration no. 009012981, registered on 27 September 2010, for the figurative mark ARLA, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification; and
- Danish trade mark registration no. VR200001185, registered 6 March 2000, for the mark ARLA FOODS, in classes 1, 5, 29, 30, 31 and 32 of the Nice Classification.

(hereinafter, collectively or individually, the Complainant's trade marks; the ARLA trade mark and the trade mark ARLA interchangeably; and the ARLA FOODS trade mark and the trade mark ARLA FOODS interchangeably).

The disputed domain name was registered on 29 May 2023 and, at the time of writing of this decision, it does not resolve to an active website ('the Respondent's website').

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## FACTUAL BACKGROUND

### A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is the fifth largest dairy company in the world and a cooperative owned by more than 12,500 dairy farmers. The Complainant was constituted in 2000, at which time the largest Danish dairy cooperative MD Foods merged with its Swedish counterpart Arla ekonomisk Förening. The Complainant reached a global revenue of EUR 11.2bn in 2021 spanning across 105 countries.

The Complainant enjoys a strong online presence, as well as a widespread business in Bahrain, the country where the Respondent appears to reside.

In addition to the trade marks set out in the above section 'Identification of rights', the Complainant owns numerous domain names containing the trade marks ARLA and ARLAFOODS, most notably <arla.com> (registered on 15 July 1996); and <arlafoods.com> (registered on 1 October 1999).

### B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

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## PARTIES CONTENTIONS

### A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

#### I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant claims that the disputed domain name incorporates the trade mark ARLA with the addition of the descriptive terms 'foods' and 'me', the latter of which being either a generic term or an acronym for the geographic location 'Middle East'; that ARLA FOODS trade mark is incorporated entirely followed by the term 'me'; and that UDRP panels have held domain names to be confusingly similar if the entirety of a trade mark, or at least a dominant part of it, is recognisable in the domain name.

The Complainant further claims that the generic Top-Level Domain (gTLD) <.com> is a standard registration requirement and, therefore, it should be disregarded in the assessment of confusing similarity.

The Complainant therefore concludes that the disputed domain name is identical and confusingly similar to the Complainant's trade marks.

#### II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not affiliated with, nor authorised, endorsed or sponsored by, the Complainant in any way, nor is Respondent known by the disputed domain name. Furthermore, the Respondent has provided false, or at least inaccurate, contact details, which cannot amount to any rights or legitimate interests in the disputed domain name.

The Complainant informs that it has attempted to correspond with the Respondent via a cease-and-desist letter, which remains unanswered. The Complainant further claims that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use. Instead, the disputed domain name is being passively held and the MX server has been set up, a factor which indicates that the disputed domain name may be actively used for fraudulent email purposes.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

#### III. The Respondent registered and is using the disputed domain name in bad faith

##### Registration

The Complainant states that the disputed domain name was registered many years after the first registration of the Complainant's marks; that the ARLA trade mark is widely known and this has been found by previous UDRP decisions (eg Arla Foods Amba v. Nashan, CAC Case No. 101486); that the Complainant's trade marks are registered in many countries; and that the Complainant enjoys a strong online presence, including in the Middle East.

The Complainant further refers to the Complainant's trade marks being fully incorporated into the disputed domain name, and also to the use of terms 'Arla Me' which are connected with the Complainant's business name. The term 'me' may also be an acronym for 'Middle East', thereby establishing a clear reference to the Complainant's clientele in the region. Moreover, the Complainant is also known by its range of products 'Arla Baby & Me Organic', this potentially being a further inference from the disputed domain name.

Therefore, the Complainant states that it is inconceivable that the Respondent was unaware of the Complainant at the time of registration of the disputed domain name.

## **Use**

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as it has been passively held. The Complainant further alludes to the doctrine of passive holding to support its claim for a finding of bad faith. In doing so, the Complainant relies upon previous WIPO UDRP panels (most notably, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; and *Comerica Inc. v. Horoshiy, Inc.*, WIPO Case No. D2004-0615), as well as paragraph 3.3 of the WIPO Jurisprudential Overview 3.0.

In order to further support the bad faith ground, the Complainant alludes to paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which: '[...] 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...']

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the Respondent's failure to respond to the Complainant's cease-and-desist letter, and the Respondent's use of a privacy shield.

In view of the above, the Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

## **B. Respondent's Submissions**

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

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### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

## **A. General**

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

## **B. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant owns trade mark rights in 'ARLA' and 'ARLA FOODS' since 2000.

The disputed domain name is <arlafoodsme.com> and it is composed of the joint terms 'arlafoods' and 'me'.

The Complainant's trade mark ARLA FOODS is wholly incorporated into the disputed domain name. The adjacent term 'me' in the disputed domain name string is rather immaterial to produce any distinctive character and, in turn, insufficient overall to dispel the textual, auditory, and visual confusion with the trade mark ARLA FOODS. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

For the avoidance of doubt, the Panel also considers the disputed domain name to be confusingly similar to the Complainant's trade mark ARLA, the only difference being the additional noun 'foods' contiguous to the term 'Arla' in the disputed domain name string.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

## **C. Rights or Legitimate Interests**

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

## **D. Registered and Used in Bad Faith**

### **D.1 Registration in bad faith**

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade marks have been registered since 2000, and the Complainant enjoys worldwide presence, including in the Kingdom of Bahrain, of which the Respondent appears to be a resident;
- The Complainant operates its activities through the domain names <arla.com> and <arlafoods.com>, which were registered in 1996 and 1999 respectively;
- The disputed domain name <arlafoodsme.com> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business;
- The Respondent's default in this UDRP proceeding; and
- The Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the

Respondent appears to have adopted a non-existent address.

## D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

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

As mentioned in the above section 'Identification of Rights', the disputed domain name does not currently resolve to an active website, and there is no evidence that it has ever held any active content.

The Panel has therefore consulted paragraph 3.1.4 (circumstances (iv) above) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0 to form its view on the use of the disputed domain names under this UDRP Policy ground. In the Panel's assessment, the factors which attach weight to the Complainant's case are as follows: (i) the degree of reputation of the Complainant's trade marks; (ii) the Complainant's trade mark registrations and use of almost identical domain names (most notably, <arlafoods.com>) for over 20 years before the Respondent's registration of the disputed domain name; (iii) the actual confusion between the disputed domain name and the Complainant's trade marks; (iv) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (v) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain name; (vi) the Respondent's enabling of the email function of the disputed domain name, which suggests that the Respondent might have intended to use the disputed domain name as a vehicle for a fraudulent commercial venture; and (vii) the overall unlikelihood of any good faith use of the disputed domain name.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

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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. **arlafoodsme.com**: Transferred

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## PANELLISTS

Name	<b>Gustavo Moser</b>
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DATE OF PANEL DECISION 2023-09-27

Publish the Decision

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