Decision for dispute CAC-UDRP-106200

Case number	CAC-UDRP-106200
Time of filing	2024-02-01 10:54:26
Domain names	arlafoods-eu.com

Case administrator

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

Complainant

Organization	Arla Foods Amba

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Mario Fuhab

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 as provided evidence of ownership of several trademark rights, including the following:

- EU TM ARLA No. 001520899, registered on May 7, 2001;
- International trademark ARLA No. 731917, registered on March 20, 2000;
- US Trademark registration (figurative) No. 3651489, registered on July 7, 2009;
- Danish trademark ARLA FOODS No. VR 2000 01185, registered on March 6, 2000.

FACTUAL BACKGROUND

The Complainant, Arla Foods Amba, is the fifth-largest dairy company in the world and a cooperative owned by 12,700 dairy farmers. The Complainant is the owner of trademarks in the terms **ARLA** and **ARLA FOODS**.

The Complainant also owns a number of domain names containing the trademarks **ARLA** and **ARLA FOODS**, such as the domain names <arla.com> and <arlafoods.com>.

The disputed domain name was registered on January 10, 2024 and resolves to an error page.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the Complainant's trademarks **ARLA** and **ARLA FOODS**, and its domain names. The Complainant contends that the addition of the terms "foods" and "eu" is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant's trademarks nor does it change the overall impression of the domain name as being associated with the trademarks **ARLA** and **ARLA FOODS**. Moreover, the Complainant submits that the addition of the suffix ".COM" is irrelevant in determining whether or not a disputed domain name is confusingly similar to a mark.

Per the Complaint, the Respondent is not known of the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Furthermore, the disputed domain name resolves to an error page. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. The Complainant further argues that the disputed domain name was used in connection with a fraud scheme via the use of emails originating from the disputed domain name.

As regards the bad faith of the Respondent, the disputed domain name includes the distinctive trademarks ARLA and ARLA FOODS. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Furthermore, the Complainant argues that the Respondent has used the domain name in relation to a wire fraud scheme, impersonating the Complainant and defrauding partners of the Complainant's.

RESPONDENT:

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant

has rights; and
2. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. the disputed domain name was registered and is being used in bad faith.

Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark, to succeed.

The Complainant has provided evidence of ownership of trademarks in the terms **ARLA** and **ARLA FOODS**.

The disputed domain name is <arlafoods-eu.com>.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The disputed domain name wholly incorporates the Complainant's trademarks **ARLA** and **ARLA FOODS**, followed by the term "eu", which may be easily understood as the ISO code for Europe. This addition does not prevent a finding of confusing similarity with the Complainant's trademarks. The fact that a domain name wholly incorporates the Complainant's trademark is sufficient for this Panel to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the Respondent's rights or legitimate interests in the disputed domain name:

1. before any notice to it of the dispute, the Respondent's use of, or 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; or
2. the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
3. the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[…] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel accepts that, in the absence of rebuttal from the Respondent, the Complainant has not at any time authorised or licensed the Respondent to use **ARLA** or **ARLA FOODS** as a domain name, business or trading name, trade mark or in any other way. In addition, nothing in the record shows any bona fide offering of goods or services from the disputed domain name on the part on the Respondent before the submission of the Complaint. The Panel finds on the contrary that the Respondent's use of the domain is nothing but illegitimate wire fraud, as evidenced largely by the Complainant.

The Complainant's Representative filed takedown requests, which resulted in the disputed domain name not resolving. The Panel finds that the Complainant provided sufficient material to evidence the Respondent's lack of rights and legitimate interests in the disputed domain name before and after the Complainant's Representative filed the takedown request.

The Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

1. circumstances indicating that the holder has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holders documented out-of-pocket costs directly related to the disputed domain name; or
2. the holder has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
3. the holder has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
4. by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location.

The evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant. The Complainant's trademark enjoys a long-standing wide-spread and continuous reputation through intensive use. The disputed domain name reproduces the Complainant's distinctive trademarks. In addition, the Respondent's use of the domain name cannot in all reason be regarded as a use in good faith. Indeed, the Respondent clearly used the disputed domain name in relation to a wire fraud, impersonating the Complainant in emails and attempting to defraud partners or clients of the Complainant.

In the absence of a rebuttal from the Respondent, and in light of all the elements above, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arlafoods-eu.com**: Transferred

PANELLISTS

Name	**Arthur Fouré**

DATE OF PANEL DECISION 2024-03-23

Publish the Decision