Decision for dispute CAC-UDRP-103988

Case number	**CAC-UDRP-103988**
Time of filing	**2021-08-19 11:01:18**
Domain names	**arlaindia.com, arlamail.com**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**Arla Foods Amba**

Complainant representative

Organization	**BRANDIT GmbH**

Respondent

Name	**bhupendra solanki**

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 submitted evidence that it is the registered owner of several trademarks (hereafter referred to as the "ARLA Trademark(s)") including, amongst others:

- Indian word trademark n. 909273 "ARLA", applied for and registered on 10 March 2000 and duly renewed, valid for various subclasses under class 29;
- Indian combined figurative trademark (with word elements) n. 1263784 "Arla" (with label), applied for and registered on 29 January 2004, valid for various subclasses under classes 5, 29, 30 and 32;
- Indian combined figurative trademark (with word elements) n. 1741422 "Arla" (with label), applied for and registered on 8 October 2008, valid for various subclasses under classes 1, 5, 29, 30, 31 and 32;
- International word trademark n. 731917 "ARLA", registered on 20 March 2000, valid for various subclasses under classes 1, 5, 29, 30, 31, and 32, and registered for various countries around the globe;
- International combined figurative trademark (with word elements) n. 990596 "Arla", registered on 8 September 2008, valid for various subclasses under classes 1, 5, 29, 30, 31, and 32, and registered for various countries around the globe;
- European Union word trademark n. 018031231 "Arla", applied for on 5 March 2019 and registered on 6 September 2019,

valid for various subclasses under classes 1, 5, 9, 16, 29, 30, 32, 35, 39, 41, 42, 43, 44 and 45;
- Etc.

The Complainant also claims that it is the registered owner of several domain names which incorporate the ARLA Trademark(s), namely (amongst others): <arla.com> (registered on 15 July, 1996), <arla.eu> (registered on June 1st, 2006), <arlafoods.com> (registered on October 1st, 1999), <arlafoods.co.uk> (registered on October 1st, 1999), <arla.eu> (registered on 26 April 2006), <arlafoods.us> (registered on 29 April, 2002) and <arlafoods.ca> (registered on 29 November, 2000).

With regard to the domain names <arla.com>, <arlafoods.com>, <arlafoods.co.uk> and various other domain names, the evidence of ownership submitted by the Complainant is not conclusive. This evidence consists of Whois Records, in which the registrant names are “redacted for privacy”. With regard to yet other domain names (such as <arlafoods.eu>, <arlafoods.ca>, <arlafoods.us> and <arla.eu>), the Complainant has submitted sufficient evidence that it is indeed the owner of these domain names.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a company which is mostly known as a producer of dairy products, with its registered office in Denmark. The Complainant is active worldwide. The Complainant claims that it employs 19,172 people across 105 countries and reached a global revenue of EUR 10,6 billion in the year 2020. The Complainant has offices worldwide, including in Asia, in countries such as China, Bangladesh, Japan, Indonesia, South-Korea, Malaysia, The Philippines, and Taiwan. The Complainant sells its milk-based products under the brands ARLA, LURPAK, CASTELLO, APETINA, and BUKO. The Complainant claims that it has a strong social media presence, namely on Facebook, Twitter and Instagram.

The Complainant submitted evidence that it is the registered owner of several trademarks listed above under "Identification of rights” as the “ARLA Trademark(s)”. The Complainant submitted evidence that it is also the owner of several domain names containing the word “ARLA”, more in particular the domain names <arlafoods.eu>, <arlafoods.ca>, <arlafoods.us> and <arla.eu>.

The disputed domain names were both registered on 28 April 2021.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names have been registered and are 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

1. Language of the proceedings

The Registrar has confirmed that the language of the registration agreement for the disputed domain names is English. As a consequence, the language of the proceeding should also be English.

2. Substantive elements

2.1. Identical or confusingly similar

The disputed domain names <ARLAINDIA.COM> and <ARLAMAIL.COM> consist of the Complainant's registered ARLA Trademark(s), with the addition of the terms "INDIA" and "MAIL", respectively.

With regard to the disputed domain name <ARLAINDIA.COM>, the disputed domain name consists of the Complainant's ARLA Trademark(s) and the term "India". The mere addition of this geographical term does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

With regard to the disputed domain name <ARLAMAIL.COM>, the disputed domain name consists of the Complainant's ARLA Trademark(s) with the addition of the term "mail". The mere addition of this generic term does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

There is also the addition of the '.com' suffixes, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Respondent did not file an administratively compliant (or any) response.

The Panel concludes that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2.2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant asserts that it has never granted the Respondent any authorisation or license to register any domain names incorporating the Complainant's ARLA Trademark(s). The Complainant further asserts that the Respondent is not affiliated with the Complainant in any way. The Complainant also argues that the Respondent is not known by the disputed domain names, and that the Complainant was not able to find any trademarks owned by the Respondent which include the terms "ARLAINDIA" or "ARLAMAIL". The Complainant asserts that the Respondent hides his identity and is not known under the disputed domain names. The Respondent's name is withheld by a privacy shield in the WHOIS registries of the two disputed domain names.

The Complainant shows that, when conducting a search for the terms "ARLAINDIA" or "ARLAMAIL", a majority of the first

search results refer to the Complainant. Furthermore, the Complainant shows that, when conducting a Google search for the Respondent's name combined with the disputed domain names, there are no results that confirm that the Respondent is known by the disputed domain names. In addition, the Complainant shows that a search for the terms "ARLAINDIA" or "ARLAMAIL" in the WIPO trademark database leads to no results.

The Complainant demonstrates that, at the time of filing the complaint, the two disputed domain names referred to parked pages containing sponsored links to third websites, some of which seem to offer food/dairy products.

The Complainant also asserts that the Respondent, before the filing of the Complaint, has not used the disputed domain names in relation to a bona fide offering of goods or services.

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

Since the Respondent did not file a Response, there is no evidence to show that the Respondent may have used the disputed domain names for any bona fide offering of goods or services of its own or has made any preparations to do so in the future. The Complainant has sufficiently shown that the Respondent does not appear to have any rights or legitimate interests associated with the ARLA Trademark(s), nor with variations thereof such as "ARLAMAIL" or "ARLAINDIA". The Respondent does not seem to own any trademarks consisting of the terms "ARLA", ARLAMAIL" or "ARLAINDIA". The disputed domain names do not correspond to the name of the Respondent. The Complainant states that the Respondent is not related to the Complainant. The Complainant further states that the Respondent was not authorised or licensed by the Complainant to register the disputed domain names or to make use of its trademarks. These statements are not refuted by the Respondent. The Panel finds that the Complainant has at least made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names. The Respondent did not come forward with convincing evidence of relevant rights or legitimate interests in the disputed domain names.

For these reasons, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names within the meaning of paragraph 4(a)(ii) of the Policy.

2.3. Bad faith registration and use

The Complainant claims that the disputed domain names were registered in bad faith, i.e. to profit from or otherwise exploit the ARLA Trademark(s). The Complainant asserts that the disputed domain names were registered several years after the registration of the Complainant's ARLA Trademarks. Moreover, the Complainant asserts that its ARLA trademark(s) are widely known all over the world, and that the Complainant has a very strong online presence, including on social media. The Complainant refers to several previous domain name decisions confirming that the Complainant enjoys a worldwide reputation.

The Complainant asserts that a search for "ARLAINDIA" or "ARLAMAIL" via Google only leads to results related to the Complainant. The Complainant further asserts that the Respondent's choice of the disputed domain names must have been influenced by the notoriety of the ARLA Trademarks, since the disputed domain names incorporate descriptive and geographical terms related to the business of the Complainant ("MAIL" and "INDIA" respectively). The Complainant, however, does not elaborate why these terms are related to its business.

According to the Complainant, the Respondent therefore knew or should have known that, when registering the disputed domain names, he would do so in violation of the Complainant's earlier rights.

The Complainant also claims that the disputed domain names were used in bad faith, i.e. to intentionally attempt to attract, for commercial gain, internet users to the disputed domain names or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain names or the other online locations, and/or of a product offered for sale on the disputed domain names.

First, the Complainant asserts that the disputed domain names consist of the ARLA Trademark(s) in its entirety, with the addition of the geographical term “India” and the term “mail” respectively. Furthermore, the Complainant points out that the Respondent is unaffiliated with the Complainant.

Second, the Complainant has submitted screenshots of the webpages available via the disputed domain names. The Complainant asserts that these screenshots prove that, at the time of filing the complaint, the disputed domain names resolved to parked pages containing sponsored links to third party websites, some of which seem to offer competing food/dairy products. In the case of the disputed domain name <ARLAMAIL.COM>, the website available via the disputed domain name even contains a link mentioning the ARLA Trademark(s) as well as the Complainant’s core business (“Get Arla Milk – Arla Milk”). The Complainant asserts that these references to the ARLA Trademark(s) catch the internet users’ attention, and these references create the impression that the websites to which the disputed domain names redirect are connected to, or managed by, the Complainant. Such use of the disputed domain names creates a likelihood of confusion, and may lead internet users to click on sponsored links displayed on the said websites, which generates illegitimate revenues for the Respondent based on the value of the Complainant’s ARLA Trademark(s).

In addition, the Complainant mentions that, on 9 June 2021, the Complainant sent the Respondent a cease and desist letter via an e-mail address of the registrar (abuse@godaddy.com). The Complainant never received a response and considers this an indication of bad faith.

Lastly, the Complainant sees the fact that the Respondent’s name is withheld by a privacy shield on the Registrar’s WHOIS pages of both of the disputed domain names as an indication of bad faith.

The Panel finds that, on the balance of probabilities, it can be presumed that the Respondent had knowledge of the existence of the Complainant and its activities as well as the Complainant's ARLA Trademark(s), for the following reasons.

The Complainant is a dairy company which is active in many countries around the world, under the ARLA Trademark(s). The Panel believes that it can be presumed that the Respondent was aware of the unlawful character of the disputed domain names at the time of their registration and use. It seems highly unlikely that the Respondent has come up with domain names consisting of the terms “ARLA” and “INDIA”, and “ARLA” and “MAIL”, without having prior knowledge of the Complainant and the Complainant’s trademark(s). With regard to the disputed domain name <ARLAINDIA.COM>, the likelihood that the Respondent had prior knowledge of the Complainant and its ARLA Trademark(s) is even strengthened by the fact that the Complainant owns several ‘ARLA’ Trademarks that are valid in India, the Respondent’s home country. In addition, the disputed domain name could lead internet users to believe that it redirects to a website dedicated to a subsidiary of the Complainant that is located in India.

The Panel accepts that, by registering the disputed domain names, the Respondent intended to disrupt the Complainant’s business and/or to offer to sell the disputed domain names to the Complainant or third parties. The Complainant has submitted evidence that the home pages of the disputed domain names mention that the domains are for sale (“Get This Domain”). Furthermore, the disputed domain names resolve to parked pages containing sponsored links to third websites, some of which seem to refer to websites offering competing food/dairy products. In the case of the disputed domain name <ARLAMAIL.COM>, the website even contains a link that mentions the ARLA Trademark(s) as well as the message “Get Arla Milk – Arla Milk”.

The Complainant has shown that a simple online search via Google for the terms “ARLA”, “ARLAMAIL”, and “ARLAINDIA” leads to several results related to the Complainant and its trademark(s), at the top of the results page.

The Panel concludes that the Respondent’s choice of the disputed domain names is likely to have been triggered by the Complainant and its earlier ARLA Trademark(s).

Not only has the Respondent not submitted a Response in this procedure, it seems that the Respondent has also failed to respond to the Complainant’s cease-and-desist letter of 9 June 2021.
The Panel believes from the facts in this case that the Respondent had the ARLA Trademark(s) of the Complainant in mind

when registering and subsequently using the disputed domain names.

For all of the reasons set out above, the Panel concludes that the disputed domain names were registered and are being used in bad faith within the meaning of paragraph 4(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. **ARLAINDIA.COM**: Transferred
2. **ARLAMAIL.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2021-09-28

Publish the Decision