

## ADMINISTRATIVE PANEL DECISION

Arla Foods amba v. Cathy Aileen

Case No. D2023-2123

### 1. The Parties

The Complainant is Arla Foods amba, Denmark, represented by BrandIT GmbH, Switzerland.

The Respondent is Cathy Aileen, Philippines.

### 2. The Domain Name and Registrar

The disputed domain name <arlauk.co> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2023<sup>1</sup>. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 29, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 1, 2023.

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<sup>1</sup> The Complaint was initially filed against two domain names: <arlauk.com> and <arlauk.co>. As the Registrar indicated that the domain name <arlauk.com> was Repossessed by GoDaddy and available for the Complainant to register, this domain name was transferred to the Complainant by the Registrar, and withdrawn from this proceeding.

The Center appointed Gregor Vos as the sole panelist in this matter on August 9, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a cooperative that is owned by more than 12,500 dairy farmers. The company was founded in 2000 and currently has around 20,900 employees.

The Complainant is the owner of *inter alia* the following registrations for the sign ARLA (hereinafter jointly referred to as the “Trademarks”).

- i. International Trademark Registration No. 731917, registered on March 20, 2000, with designation of *inter alia* Australia, China and Japan;
- ii. United Kingdom Trademark Registration No. UK00002226454, registered on October 4, 2002;
- iii. United States of America Trademark Registration No. 3325019, registered on October 30, 2007.

It is undisputed that the Complainant is the holder of *inter alia* the domain names <arla.com> and <arla.eu>. The Domain Name was registered on December 15, 2022. Currently, the Domain Name resolves to a webpage on which third-party pay-per-click (“PPC”) links are shown of which some are related to the Complainant’s business.

#### **5. Parties’ Contentions**

##### **A. Complainant**

With the Complaint the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the Domain Name, and the Domain Name was registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant states that the Domain Name incorporates the Trademarks in their entirety. The addition of the geographical term “uk” does not prevent a finding of confusing similarity.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not commonly known by the Domain Name and has not replied to the cease and desist letter of the Complainant. Also, the Respondent is not making legitimate noncommercial or fair use of the Domain Name, is not authorized, licensed or otherwise permitted to use the Complainant’s Trademarks in any way. Further, the addition of the term “uk” carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Finally, according to the Complainant, the Respondent has registered and used the Domain Name in bad faith. According to the Complainant, the Respondent was aware or should have been aware of the Trademarks when registering the Domain Name. The Domain Name was undoubtedly registered with the intention to create an association and likelihood of confusion with the Trademarks. Also, the fact that the Domain Name resolves to a website on which PPC links are shown, leads to a finding that the Respondent

takes unfair advantage of the Trademarks. Finally, the Respondent has not replied to the cease and desist letter of the Complainant and has concealed its identity with a privacy shield.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

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

Only if all three criteria have been met, the Panel is able to grant the remedy requested by the Complainant. The Panel will now consider each criterion individually.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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 (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the element "uk" that refers to the United Kingdom, to the Domain Name does not prevent a finding of confusing similarity. The country code Top-Level Domain ".co" is viewed as a standard registration requirement and as such is disregarded under the confusing similarity test. Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

### **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the

Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

In addition, the Domain Name resolves to a webpage on which PPC links are shown. This use, given the circumstances, does not establish rights of legitimate interests in the Domain Name on the part of the Respondent. Furthermore, the composition of the Domain Name cannot constitute fair use if it, as in the present case, effectively impersonates or suggests sponsorship or endorsement by the trademark owner, without that being the case (section 2.5.1, [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

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

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character has been confirmed by earlier Panels (see e.g. *Arla Foods Amba v. Nick Hiscox*, WIPO Case No. [D2017-0393](#)).

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name signals an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainant (section 3.2.1, [WIPO Overview 3.0](#)).

Further, the Panel has found that the Respondent lacks any rights to or legitimate interests in the Domain Name. The Panel finds that the Respondent is taking unfair advantage of the Domain Name by diverting Internet users to a website that includes PPC links of a commercial nature. Therefore, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation or endorsement (see e.g., *"Dr. Martens" International Trading GmbH / "Dr. Maertens" Marketing GmbH v. Joan Mitchell*, WIPO Case No. [D2018-0226](#)).

Also, the Respondent failed to submit a response to rebut the *prima facie* case as established by the Complainant.

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <arlauk.co> be transferred to the Complainant.

*/Gregor Vos/*

**Gregor Vos**

Sole Panelist

Date: August 22, 2023