Panel Decision for dispute CAC-ADREU-004917

Case number	**CAC-ADREU-004917**
Time of filing	**2008-01-25 09:21:30**
Domain names	**arlafood.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Arla Foods amba, Jakob Balling**

Respondent

Organization / Name	**juulandersen.com, Tim Juul Andersen**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceeding regarding the disputed domain name.

FACTUAL BACKGROUND

The Complainant Arla Foods amba has filed a complaint against the holder of the domain name arlafood.eu.

The Respondent is a Danish company named Juulandersen.com v/Tim Juul Andersen. The Panel has been notified that the Respondent has failed to submit the Response in hard copies as prescribed by the .eu Dispute Resolution Rules (the Rules) paragraph B3.

The Respondent has submitted the Response by electronic mail. Despite this formal deficiency the Panel has decided to include the Response in its considerations.

The Complainant is a cooperative owned by more than 10.000 farmers in Denmark and Sweden. The Complainant produces milk based products. The trademark ARLA FOODS was registered in Denmark in 2000 and the Complainant uses the same name as trade name as well. Furthermore, the Complainant is the holder of several domain names including arlafoods.com, arlafoods.dk, arlafoods.se etc.

The Respondent registered the domain name arlafood.eu in the so called “landrush” period on June 15, 2006. When the Panel received this case the domain name had a web page attached. The web page contains information about Arabic Lebanese Assyrian Food.

The correspondence between the parties shows that the Complainant has approached the Respondent in order to have the disputed domain name transferred voluntarily. After being approached by the Complainant, the Respondent explains by e-mail about a project intended for the web site and the Respondent has uploaded content with relation to this project to the web site. The Respondent has informed that he is acting on behalf of his wife who has been involved in a traffic accident with the result that she is not able to work. The Complainant has asked if the Respondent is willing to sell the domain name and if so, at which price. Also, the Complainant has offered to loan out to the Respondent two marketing people who could help the Respondent finding a new name for his wife’s project. The Respondent has declined the Complainant’s offer and has in stead offered to sell the domain name to a fixed price of DKK 30.000 (EUR 2.238). Next the Complainant has initiated this case by filing a Complaint.

A. COMPLAINANT

The Complainant has argued that they own the trademark and company name ARLA FOODS. Furthermore, the Complainant holds several domain names including the words ARLA FOODS.

When the Complainant became aware that the Respondent had registered the domain name arlafood.eu they approached the

Respondent in order to have the domain name voluntarily transferred. During the correspondence with the Respondent it became clear that the Respondent wanted to make use of the domain name in a project involving foodstuff.

The Complainant finds it unacceptable that the Respondent is running a project involving foodstuff using a domain name that is practically identical to the Complainant's company name, trademark etc.

The Complainant argues that it holds prior rights in the name ARLA FOODS within the meaning of Article 10 of Regulation (EC) No 874/2004 (the Regulation).

The domain name arlafood.eu is quasi-identical to the Complainant's protected trade name and trademark, ARLA FOODS.

The Respondent has no obvious rights as mentioned in Article 10(1) in the name. The explanation of the project relating to the name is – according to the Complainant - fabricated by the Respondent. Even if the domain name was in fact an abbreviation of the words, Arabic Lebanese Assyrian Food it would still constitute an infringement of the Complainant's rights.

ARLA FOODS is a well-known name worldwide and the Complainant obtained rights in the name prior to the Respondent's registration of the domain name. Given that the Respondent is Danish it is unlikely that he registered the domain name without knowing the existence of the Complainant. The circumstances indicate that the domain name is registered with the purpose of cyber-squatting i.e. selling or renting the domain name to the Complainant and furthermore it has been registered with the purpose of taking advantage if the Complainant's reputation and in order to mislead consumers who would naturally expect to find the Complainant's marketing on the web site of the disputed domain name.

On these grounds the Complainant contends that the domain name arlafood.eu should be revoked in accordance with Article 21 of the Regulation.

B. RESPONDENT

The Respondent has informed the Panel (in the Response) that the rightful owner of the domain name is in reality the wife of the Respondent. Her origin is partly Assyrian, Lebanese and Arabic and she wants to build a community on the web site in order to reach other people in Europe having the same origins. The overriding purpose of the web site would be to share recipes and locations of food stores selling Middle Eastern food in Denmark and Europe.

The name of the community is ARABIC LEBANESE ASSYRIAN FOOD and the name ARLAFOOD is an abbreviation hereof. On this background the Respondent alleges to have registered the domain name with a legitimate interest and to hold rights in the name.

Unfortunately, the Respondent's wife was involved in an accident which has entailed that she is not able to work much and for this reason the web site has not had any actual content until the Complainant approached the Respondent.

When the Complainant approached the Respondent he hastened to upload the material he already had to the web site. He wanted to demonstrate that the purpose of the registration and use of the domain name was legitimate. Also the Respondent wanted to demonstrate that the domain name was not registered with the purpose of selling or renting it to the Complainant later on.

The Respondent argues that the word ARLAFOOD is not confusingly similar to the name of the Complainant since people and search engines know the difference. Furthermore, the Community of his wife does not sell food products.

The Respondent registered the domain name in order to help his wife and without any bad intentions.

DISCUSSION AND FINDINGS

According to the provisions in Article 21(1) of the Regulation a domain name shall be subject to revocation when it is "identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith."

The Complainant has established prior rights in the name ARLA FOODS in the form of a registered trademark and as a substantial part of

the company name of the Complainant ARLA FOODS amba.

The disputed domain name arlafood.eu is almost identical to the Complainant's trademark ARLA FOODS and to other domain names of the Complainant e.g. arlafoods.com. Consequently, the domain name arlafood.eu is certain to mislead the Complainant's customers and other Internet users to think that they are visiting a web page of the Complainant. Therefore, the Panel finds that the domain name is confusingly similar to the name in which the Complainant holds prior rights.

On this background, the Complainant has established a prior right in the domain name arlafood.eu.

Subsequently, the Panel must examine whether or not the next criteria set out in Article 21(1)(a) and (b) in the Regulation are satisfied in order to decide whether or not the disputed domain name shall be subject to revocation or not.

Like the Complainant the Panel naturally has sympathy for the community and project described by the Respondent. Even if the registration and use of the disputed domain name seem to be reasoned by a likely purpose the Respondent has not proven to be commonly known by this name. The disputed domain name arlafood.eu has not actually been used until the Complainant approached the Respondent. The domain name, arlafood.eu will undoubtedly be confused with the name and trademark of the Complainant. The registration has an inevitable element of unjustifiable intention to mislead Internet users visiting the domain name arlafood.eu as they are most likely to think that they are visiting a web page belonging to the Complainant. Also on these grounds, the Panel finds that the Respondent has failed to prove that the registration is made with legitimate interest in the name.

The Panel finds that even though the Respondent has offered to sell the domain name on explicit request of the Complainant, this circumstance underlines the indications of the Respondent's bad faith.

The Panel agrees that the name and trademark of the Complainant is well-known at least in Denmark. Consequently, the Panel finds that the Respondent cannot possibly have made the registration of the domain name without knowing about the existence of the rights of the Complainant. It seems reasonable to believe that the abbreviation ARLAFOOD is at least partly fabricated for the purpose of obtaining some of the Complainant's goodwill and reputation.

On this background the Panel finds that the disputed domain name has been registered without legitimate interest and in bad faith and therefore the domain name should be transferred to the Complainant.

To have the domain name transferred the Complainant must fulfil the eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002. Having its registered office in Denmark the Panel finds that the Complainant satisfies this criterion.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name ARLAFOOD be transferred to the Complainant

PANELISTS

Name	**Jakob Plesner Mathiasen**

DATE OF PANEL DECISION 2008-05-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has established prior rights in the name ARLA FOODS in the form of a registered trademark and as a substantial part of the company name of the Complainant ARLA FOODS amba.

The disputed domain name arlafood.eu is almost identical to the Complainant's trademark ARLA FOODS and to other domain names of the Complainant.

The Respondent has argued that the domain name is registered for the purpose of establishing a community regarding food and addressed to people with Arabic Lebanese Assyrian origins living in Europe. According to the Respondent the domain name is an abbreviation of ARABIC LEBANESE ASSYRIAN FOOD.

The Panel finds that the disputed domain name will undoubtedly be confused with the name and trademark of the Complainant and the registration has an inevitable element of unjustifiable intention to mislead Internet users visiting the domain name arlafood.eu as they are most likely to think that they are visiting a web page belonging to the Complainant.

The Panel finds that even though the Respondent has offered to sell the domain on explicit request of the Complainant, this circumstance underlines the indications of the Respondent's bad faith.

The Panel agrees with the Complainant that the name and trademark of the Complainant is well-known at least in Denmark. Consequently, the Panel finds that the Respondent cannot possibly have made the registration of the domain name without knowing about the existence of the rights of the Complainant.

On this background the Panel finds that the disputed domain name has been registered without legitimate interest and in bad faith, cf. Article 21(1) of the Regulation. The Panel orders that the domain name be transferred to the Complainant.