

**DECISION OF THE THIRD-PARTY DECIDER**

**Arla Foods Amba / Ye Li**

**Case no. 44437 / domain name lurpak.be**

**1. The parties**

1.1. Complainant: Arla Foods Amba  
Sonderhoj 14  
8260 Viby  
Denmark

*Represented by:*

BrandIT GmbH  
Bellerivestrasse 49  
8008 Zurich  
Switzerland

1.2. Domain name holder: Ye Li  
Nanjingxi Rd. 21000  
200000 Shanghai  
China

**2. Domain name**

Domain name: **lurpak.be**  
Registered on: 8 April 2016

*Hereafter referred to as "the Domain name".*

**3. Procedure**

On 20 November 2017, the Complainant filed a complaint with CEPANI under article 10 of the terms and conditions for .be domain name registrations (hereafter referred to as the "Policy of DNS.be") and in accordance with the CEPANI rules for domain name dispute resolution (hereafter referred to as the "Rules").

On 22 December 2017, CEPANI appointed Mr Dieter Geernaert as third-party decider (hereafter referred to as the "Third-Party Decider"), pursuant to article 7.2 of the Rules. CEPANI informed the Parties and

the Third-Party Decider that the debates were to be closed on 29 December 2017<sup>1</sup> and that the Third-Party Decider's decision was due on 16 January 2018 by the latest.

On 2 January 2018, the debates were closed.

The Domain name holder did not file any response to the Complaint.

In accordance with article 6.4. of the Rules as in force as from 1 January 2018, this decision is based solely on the Complaint including the complainant's exhibits.

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

1. The Complainant, Arla Foods Amba, submits that is a global dairy company and co-operative of 12,600 dairy farmers in seven countries and that it has operations worldwide, including in Europe and China.

The Complainant is the registered owner of international and EU LURPAK trade marks for products in classes 1, 5, 29, 30, 31 and/or 32 (Nice classification). These include butter and dairy products. Its trade marks have been registered since 2012. The Complainant acquired these trade marks from Mejeriforingen Danish Dairy Board.

The Complainant is also the registered owner of the domain names lurpak.com, which name was registered on 31 October 1996, and lurpak.net, which name was registered on 18 November 2005.

2. According to the WHOIS records, the Domain name holder is an individual residing in China. He registered the Domain name on 8 April 2016. He appears to be using the Domain name for a website that was generated using domain name parking and that contains links to commercial products.

3. In a letter dated 1 July 2016, the Complainant's representative, BrandIT GmbH, acting as representative of Mejeriforingen Danish Dairy Board, requested the Domain name holder to transfer the Domain name to Mejeriforingen Danish Dairy Board. The latter is the owner of several international and EU LURPAK trademarks for goods in class 29 that currently co-exist with the Complainant's trade marks. The representative asserted that the Domain name holder infringed Mejeriforingen Danish Dairy Board's rights to these trademarks.

In an e-mail of 1 July 2016 the Domain name holder replied: "5000 Euro". The representative did not reply to this 'proposal'.

4. The same representative, this time acting on behalf of the Complainant, filed the current complaint on 20 November 2017.

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<sup>1</sup> Given the holiday season, this deadline was extended until 2 January 2018.

## 5. Position of the parties

### 5.1. Position of the Complainant

5. The Complainant requests the transfer of the Domain name registration because the three cumulative conditions for such transfer are met.

6. First, the Domain name is identical to its well known registered trade mark LURPAK as the name directly and entirely incorporates that trade mark. For the purpose of this comparison, the local Level Domain (ccTLD) suffix ".be" should be disregarded since it does not have any distinctive character within the Domain name.

7. Second, the Complainant finds that the Domain name holder has no rights or legitimate interests with regard to the Domain name. The Complainant did not find any evidence that the Domain name holder is commonly known by the Domain name. He also does not appear to have used, to be using or to intend to use the Domain name in connection with the bona fide offering of goods or services.

Instead, the Domain name holder's intention is to take advantage of an association with the business (including the use of the LURPAK trade mark) of the Complainant, of which the Domain name holder could have been easily aware of if he had carried out the relevant Internet searches. The website associated with the Domain name is being used as a pay-per-click site, featuring links to competitor brands such as "Kerrygold Irish Butter" and "Red Feather Canned Butter".

8. Third, the Complainant is of the opinion that the Domain name is registered and is being used in bad faith.

According to the Complainant, it seems unlikely that, at the time of the Domain name registration, the Domain name holder was not aware of the Complainant's registration and its long spread use of the well known LURPAK trade marks, which predate the Domain name registration.

The offer of 1 July 2016 of the Domain name holder to transfer the Domain name to the Complainant for EUR 5,000.00 proves that the Domain name was registered and/or is being used in bad faith since this asking price exceeds the costs related to the acquisition of the Domain name. In addition, the Complainant found a pattern of abusive domain registrations on the part of the Domain name holder. A WHOIS search on the Domain name holder's e-mail address demonstrates that it is used as the e-mail address of the registrant of 1418 domain name registrations, including many featuring well known trade marks of third parties. Also, the Domain name holder was the respondent in 17 UDRP disputes. All of these matters resulted in a forced transfer of the domain names to the complainant in those matters.

5.2. Position of the Domain name holder

9. The Domain name holder has not submitted any response to the complaint.

## 6. Discussion and findings

Pursuant to Article 16.1 of the Rules as in force from 1 January 2018, the Third-party decider shall rule on domain name disputes with due regard for the Policy of DNS.be and the Rules.

Pursuant to Article 10 (b) (1) of the Policy of DNS.be, the Complainant must provide evidence of the following:

- *"the registrant's domain name is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and*
- *the registrant has no rights or legitimate interests in the domain name; and*
- *the registrant's domain name has been registered or is being used in bad faith."*

### 6.1. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

10. The Complainant asserts that it is the owner of the registered trade mark LURPAK to which the Domain name is identical.

11. According to the evidence submitted, the Complainant is the registered owner of the following registered trade marks:

1. EU trade mark LURPAK (word) with registration number 010657385;
2. EU trade mark LURPAK (word/image) with registration number 010657278;
3. EU trade mark LURPAK LIGHTER (word) with registration number 010657823;
4. International trade mark LURPAK (word/image) with registration number 1142736;
5. International trade mark LURPAK (word) with registration number 1167472;

6. International trade mark LURPAK LIGHTER (word) with registration number 1141163;
7. International trade mark LURPAK SINCE 1901 (word/image) with registration number 1142737; and
8. International trade mark LURPAK ESTD 1901 (word/image) with registration number 1322106.

All of these trademarks other than the LURPAK LIGHTER trade mark grant exclusive trade mark rights to the Complainant in the European Union.

12. We find that the Domain name is identical to EU trade mark LURPAK (word) with registration number 010657385 and international trade mark LURPAK (word) with registration number 1167472.

To assess whether the Domain name is identical to the trade marks of the Complainant, in the matter at hand, the suffix ".be" is irrelevant since it does not have any distinctive character within the Domain name. It refers only to its geographical extension (CEPANI case No 44002 (stubru.be), CEPANI case No 44003 (pernod.be) and CEPANI case No 44427 (lavazza.be)).

13. Since the Complainant proves that it is the owner of the registered LURPAK trade marks listed above and since the Domain name is identical to its two word marks LURPAK, the first condition of Article 10 b) 1) of the Policy of DNS.be is met.

#### 6.2. The registrant has no right or legitimate interests in the Domain Name

14. The Complainant has to prove, or at least make plausible, that the Domain name holder does not have any right or legitimate interests in the Domain name.

15. The Domain name holder has no business connection with the Complainant. He is not a distributor, neither a competitor of the Complainant.

16. The Complainant rightly sets out that there do not appear to be any circumstances that would demonstrate that this Domain name holder has any of the rights or legitimate interests listed in Article 10b (3) of the Policy of DNS.be.

First, there is no evidence that the Domain name holder is commonly known by the Domain name. The only information available about the the Domain name holder is the mention of his name in the WHOIS record. The the content on the website www.lurpak.be or any other use of the Domain name does not show that he Domain name holder would be commonly known by the name LURPAK.

Second, it does not appear that the Domain name holder has used or has been demonstrably preparing to use the Domain name in connection with a bona fide offering of goods or services.

Third, the Domain name holder is currently making a commercial and unfair use of the Domain name. He is using the website associated with the Domain name as a pay-per-click site, featuring links to competitor brands such as "Kerrygold Irish Butter" and "Red Feather Canned Butter" to divert consumers for commercial gain.

Consequently, the Complainant makes it plausible that the Domain name holder does not have any rights or legitimate interest in the Domain name.

17. The Domain name holder did not take the opportunity to demonstrate any right or legitimate interest in the Domain name in his e-mail of 1 July 2016 or in the current domain name dispute.

18. Therefore, the Third-Party Decider concludes that the second condition of Article 10 b) 1) of the Policy of DNS.be is fulfilled.

### 6.3. The registrant's Domain Name has been registered or is being used in bad faith

19. The Domain name was registered and is being used in bad faith. This is demonstrated by the following circumstances:

20. The Domain name was registered primarily for the purpose of selling it for a price that exceeds the cost that are directly related to the registration.

The e-mail of 1 July 2016 of the Domain name holder in which he replied "5.000 Euros" (and nothing else) to the cease and desist letter of the representative of the other owner of LURPAK trade marks, Mejeriforingen Danish Dairy Board, is conclusive evidence of such bad faith. That price clearly exceeds the direct costs related to the acquisition of the Domain name. Also, the Domain name holder did not attempt to refute the allegations that he was infringing the exclusive trade mark rights of the owner of the LURPAK trade mark.

The fact that that fee quote was addressed to Mejeriforingen Danish Dairy Board and not to the Complainant is not relevant. The Domain name holder's reply clearly demonstrates that his only intention is to sell the Domain name at an excessively high price, to any party.

21. The bad faith of the Domain name holder is confirmed by his pattern of conduct. He is the owner of approximately 1418 domain name registrations that are identical or confusingly similar to trade marks to which, most likely, he does not have any rights (e.g. Armani and Bosch) and which registrations prevent the rightful owner - such as the Complainant - to use the Domain name.

In addition, the Domain name holder was involved in at least 17 UDRP disputes. In each of those disputes, the Domain name holder was ordered to transfer the domain name.

In those circumstances, the Domain name holder must have had knowledge of the identical LURPAK trade marks, irrespective of whether those trade marks were well known at the time of the registration, which the Complainant asserts but does not prove.

22. The transfer offer also constitutes evidence of the use in bad faith of the Domain name.

23. The fact that the Domain name is currently being advertised as being for sale (parking website) and that the website is being used for a pay-per-click site instead of for the bona fide offering of LURPAK products, constitutes additional evidence of the use in bad faith. The Domain name holder, who has no rights or legitimate interests in the Domain name, is intentionally using it to attract Internet users to the Domain name holder's website and to the other online locations to which it links, thereby creating confusion with the Complainant's trade marks.

24. For the foregoing reasons, the Third-Party Decider concludes that the third condition of Article 10 b) 1) of the Policy of DNS.be is fulfilled.

## 7. Decision

25. Consequently, pursuant to Article 10 (e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-party Decider hereby rules that the domain name registration for the "**lurpak.be**" domain name is to be transferred to the Complainant.

Antwerp, 16 January 2018.

A handwritten signature in blue ink, consisting of a stylized, circular scribble with a vertical line through it and a horizontal line extending to the right.

Dieter Geernaert  
Third-party Decider