Decision for dispute CAC-UDRP-101789

Case number	CAC-UDRP-101789
Time of filing	2017-12-01 09:09:33
Domain names	faberservicecenterbangalore.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Faber S.P.A.

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	c shashikumar

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the word FABER, among which for the purpose of these UDRP proceedings, the Panel will take into consideration the following:

- FABER (logo), Indian registration No. 723816, dating back to 17 June 1996, covering goods in class 11;
- FABER (word), Indian registration No. 1684284, dating back to 6 May 2008, covering goods in classes 11 and 21;
- FABER (word), International registration No. 1343497, of 30 November 2016, designating several countries, including India, were the trademark was registered on 11 May 2017.

FACTUAL BACKGROUND

The Complainant is the Italian company Faber S.p.A., dating back to 1955 and part of the Swiss Franke Group of which it became an important Business Unit in 2005. Today, the Faber Group operates in 8 countries and 3 continents.

In India, Faber is No. 1 hoods and hobs brand. Over 250 employees produce more than 300 products in the Pune plant, with a current yearly production capacity of 150,000 hoods, 100,000 hobs and 50,000 other kitchen appliances. The Complainant

has over 2,000 retail counters for sales and service across India.

The Complainant's official sale and service locator website in India is at www.faberindia.com.

The Complainant owns several registrations for the trademark FABER in India, among which those mentioned above.

All these trademarks predate the date of registration of the disputed domain name, which occurred on August 23, 2017.

The Complainant, through its parent company Franke Technology and Trademark Ltd has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "FABER", such as <faber.online> (created on August 19, 2015), <faberindia.co.in> (created on September 18, 2007), faberonline.net (created on December 15, 1999), and <faberspa.com> (created on December 14, 1999). Complainant uses these domain names to connect to websites through which it informs potential customers about its FABER mark and its products and services.

PARTIES CONTENTIONS

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

I. The disputed domain name is confusingly similar to the Complainant's trademark

According to the Panelist, the disputed domain name is confusingly similar to the Complainant's trademark, since it fully incorporates this trademark followed by the descriptive English words "Service Center Bangalore", which are closely connected to the Complainant's business, as they refer to a location where the consumer may find assistance for FABER marked goods. Bangalore is the capital of the Indian state of Karnataka, a very important industrial area of the country.

Therefore, a domain name fully incorporating the Complainant's trademark followed by descriptive terms closely associated with the Complainant's business and location, are likely to give rise to substantial likelihood of confusion with the Complainant's earlier well-known trademarks.

For these reasons, the Panelist concludes that the Complainant has met the first requirement under the Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant provided evidence that at the time of the filing of this Complaint, the Respondent was using the disputed domain name to attract Internet users to its website, where the Respondent used the Complainant's logo with the words "Authorized Dealer" underneath. In addition, the Complainant pointed out that the Respondent's website invited potential customers to contact the Respondent via telephone or through a "contact form" or a "complaint registration form".

The screenshots of the Respondent's website show that the FABER trademarks were prominently displayed on multiple occasions and that the website included a description of the Complainant's activities and business.

The Complainant maintains that the Respondent is not one of its authorized repair centers/dealers and that he is not known by the disputed domain name. The Complainant also states that, the Respondent failed to make any claim to have any earlier right, or to have made a legitimate use of the disputed domain name. The Complainant sent a cease and desist letter to the Respondent, to which the Respondent failed to reply.

In the Complainant's view, the disputed domain name was registered to attract potential consumers to its on-line location to gain business profit by providing the false impression that the website belongs to the Complainant, or that the Respondent is an official authorized repair center of the Complainant's goods.

The Panel shares the Complainant's view and finds that the Complainant has made at least a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has proved that at the time of the filing of its Complaint, the Respondent was using the disputed domain name to lead Internet users to a website containing multiple references to the trademark FABER, making reference to the Complainant's activities and goods, and inducing to believe that the website was associated with, or approved by, the Complainant, since it included the wording "Authorized Dealer" just underneath the Complainant's trademark.

Therefore, the Respondent's website was highly misleading as it provided the false impression to belong to the Complainant itself, or at least to someone having an official business relationship with the Complainant.

In some instances, UDRP Panels have recognized that service providers using a domain name incorporating the complainant's trademark to undertake repair services relating to the complainant's goods may be making a bona fide offering of services, and thus have a legitimate interest in the domain name. However, for this being the case, at least the following cumulative conditions must be satisfied (the so-called "Oki Data test"):

- the respondent must actually be offering the services at issue;
- the respondent must use the site to sell only the trademarked services;
- the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- the respondent must not try to "corner the market in domain names that reflect the trademark".

In the case at issue at least one of the conditions set forth above to establish a use of the disputed domain name in connection with a bona fide offering of services is not met. In particular, the Respondent conveyed the false impression to be an official authorized dealer/repair center, while in fact it was not. It is not clear, at least from the screenshots provided by the Complainant, what kind of activity was indeed the Respondent promoting through its website. It could have been a sale activity (as the Respondent presented himself as an "authorized dealer") or an assistance/repair activity (since the dispute domain name includes the words "servicecenter"). It is however clear that the relationship with the trademark holder referred to in the website (i.e., that of being an authorized dealer) was untrue. This circumstance alone is sufficient to exclude that the Respondent has rights or legitimate interests in the disputed domain name.

The Respondent had the opportunity to rebut the Complainant's arguments, by replying to the cease and desist letter and to the Complaint, but failed to do so. Instead, while writing this decision, the Panel noticed that the Respondent has changed the set up of his website preventing Internet users to visit it. As a result, the website is no longer accessible. In the Panel's view, the obscuration of the use of the disputed domain name after the filing of the UDRP dispute, coupled with a lack of

filing of a Response (and reply to the Complainant's cease and desist letter), is a further indication that the Respondent was not making a fair and legitimate use of the disputed domain name.

For all reasons mentioned above, the Panel concludes that the Complainant has satisfactorily proved the Respondent's absence of rights or legitimate interests in the disputed domain name <faberservicecenterbangalore.com>.

III. The disputed domain name has been registered and is being used in bad faith

Under Paragraph 4(a)(iii) of the Policy, in order to succeed in UDRP proceedings it is necessary to prove both registration and use of the domain name in bad faith.

As far as registration in bad faith is concerned, it is clear that the Respondent was well aware of the Complainant's well-known trademark at the time it sought registration of the disputed domain name. Both the type of domain name registered - fully consisting of the Complainant's trademark, followed by the descriptive words associated with an activity strictly connected with the Complainant's goods, and with one of the most relevant geographical locations of the Complainant – and the contents of the website <www.faberservicecenterbangalore.com>, are evidence of the fact that the Respondent targeted the Complainant's trademark at the time of the registration of the disputed domain name for his own business profit.

Therefore, the Panel concludes that the Complainant provided sufficient evidence that the disputed domain name was registered in bad faith.

As far as use in bad faith is concerned, the Panel notes that in his website, the Respondent provided the false impression to be one of the official service centers/dealers of the Complainant.

Moreover, the Respondent was using his website at the disputed domain name to elicit personal information from potential customers through a "contact form" or a "complaint registration form", and invited Internet users to contact him via telephone. As already indicated in previous decisions (see WIPO Case No. D2015-1024 Steven Madden, Ltd. vs. Daniel Monroy) "users presumably would not provide such data unless they believe they are dealing with Complainant or with a representative of Complainant (…). [S]ince personal data are a valuable commodity, eliciting such data as described is not a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers, pursuant to Policy paragraph 4(c)(iii)".

The Respondent was probably trying to "phish" for users' personal data, by exploiting the reputation of the Complainant and of its trademarks. Such use is to be considered use in bad faith.

The Complainant tried to avoid the pending UDRP dispute by sending a cease and desist letter to the Respondent requesting the transfer of the disputed domain name. However, the Respondent did not reply to the cease and desist letter. Rather, the Respondent changed the set up of his website to deny access to Internet users. In the current situation, the Panel finds that the lack of reply to the Complainant's cease and desist letter and the configuration of the Respondent's website after having become aware of the Complainant's dispute, to conceal the use of the disputed domain name to the Panel, are further strong indications of bad faith.

The Panel therefore concludes that the Respondent used the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, or of a service on the Respondent's website.

Therefore, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FABERSERVICECENTERBANGALORE.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-01-17

Publish the Decision