Decision for dispute CAC-UDRP-101854

Case number	CAC-UDRP-101854
Time of filing	2018-01-25 09:05:03
Domain names	faberservicecentre.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Faber S.P.A.

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Mr. Chand

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant holds several registered FABER trademarks, including Indian registered trademark FABER, Application No. 1684284, registered as from June 5, 2008.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
Tracing its origin to the 1950s in Italy, the Complainant is a leading provider of kitchen hoods, hobs and other kitchen appliances, including in India, where it has over 2,000 retail counters for sales and service. It is the registered proprietor of the Indian trademark FABER, Application No. 1684284, registered as from June 5, 2008 in Class 11.

The disputed domain name <faberservicecenter.com> was registered on April 1, 2016. The second disputed domain name <faberservicecentre.com> was registered on October 28, 2017. Both named Respondents are from India. The disputed domain names resolve to websites promoting the servicing of kitchen equipment and displaying the same heading: "FABER Appliances Repairs", accompanied by a depiction of a smiling mechanic wearing a peaked cap and holding a spanner. Each website also contains the following text:

"WELCOME TO FABER APPLIANCE REPAIRING
Faber Appliance Repairing is an exclusive service oriented company. We constitute a team of qualified professionals who have vast experience in the service industry. We provide service support for all your home appliances such as Gas Stove, Induction Cooker, Microwave Oven, Chimney etc, we have developed strong knowledge base to service and support the latest household technology. Quality is the prime concern of our company. We undertake varied stringent measures to make sure that the customers are provided with flawless services. Our services are carried out by experienced and highly qualified experts and meet industry standards and norms.
The service rendered by our organization is only possible due the diligent efforts put in by our professionals. Our professionals are from various domains with relevant industry experience. Our team is the strongest support of our organization that helps us offer quality services to our esteemed customers. Read More".

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 Respondents to have no rights or legitimate interests in respect of the disputed domain names (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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Further, having regard to the similarities between the websites to which the disputed domain names resolve and to the absence of any response, the Panel accepts the Complainant's contention that the entities which control both the disputed domain names are effectively controlled by the same person and/or entity and that, despite the different names in which the disputed domain names are registered, it is appropriate for these proceedings to be consolidated.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, to obtain transfer of a domain name, the Complainant must prove the following three elements: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in the domain name; and (iii) the Respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters

Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

As to the first element, each of the disputed domain names incorporates the Complainant's FABER trademark, adding the descriptive words "service centre" or "service center", which do nothing to distinguish the disputed domain names from the Complainant's mark. The gTLD ".com" may be disregarded. Accordingly, both disputed domain names are confusingly similar to the Complainant's FABER trademark.

As to the second element, the Complainant contends that neither of the Respondents has rights or legitimate interests in the disputed domain names because, inter alia, neither Respondent is commonly known by the disputed domain names and neither has shown that the disputed domain names will be used in connection with a bona fide offering of goods or services. The Complainant says the intention of the disputed domain names is to take advantage of an association with the Complainant's business, since any visitor to the websites would have the impression that those are official sites of the Complainant. Neither Respondent is an authorized repair centre yet the use of the trademark FABER in the disputed domain names and in the websites creates the impression that there is some official or authorized link with the Complainant in relation to repairs and services, especially in the Indian market.

The Panel finds that the FABER mark is distinctive and widely known. The Complainant's assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain names on the part of the Respondents. The evidentiary burden therefore shifts to the Respondents to show that they do have rights or legitimate interests in the disputed domain names. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondents have made no attempt to do so.

In the circumstances of this case, the Panel finds that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

As to the third element, the Complainant invokes, inter alia, sub-paragraph 4(b)(iv) of the Policy, which sets out illustrative circumstances, which, though not exclusive, shall be evidence of both bad faith registration and bad faith use for purposes of paragraph 4(a)(iii) of the Policy, namely:

"(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, 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 location or of a product or service on its website or location."

The Panel finds that the Respondents must have been aware of the Complainant's FABER mark when they registered the disputed domain names and that the disputed domain names are being used in the manner described in the Policy, sub-paragraph 4(b)(iv) of the Policy. Accordingly, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FABERSERVICECENTRE.COM**: Transferred
2. **FABERSERVICECENTER.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2018-03-07