

Decision for dispute CAC-UDRP-104924

Case number CAC-UDRP-104924

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Domain names fermobs.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization FERMOB

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name John Scott

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of trade marks for FERMOB including, by way of example, European Union trade mark, registration number 006952758, in classes 11, 20 and 21, registered on January 29, 2009.

FACTUAL BACKGROUND

The Complainant is a French company, established in 1989, that designs and manufactures metal and coloured outdoor furniture. The Complainant's brand is FERMOB and, in addition to its FERMOB trade marks, it owns the domain name <fermob.com>.

The disputed domain name <fermobs.com> was registered on May 7, 2021. It does not resolve to an active website.

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. It contains the Complainant's FERMOB trade mark in its entirety, and adds an "s" at the end of the mark, which is characteristic of typosquatting intended to create confusing similarity between the Complainant's mark and the disputed domain name.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant has not granted a licence or other authorisation to the Respondent to make use of its FERMOB trade marks. The disputed domain name is a typosquat version of the Complainant's mark, registered in order to

take advantage of Internet users' typographical errors, and evidences a lack of rights or legitimate interests in the disputed domain name. Furthermore, the disputed domain name has never resolved to an active web page, which confirms that the Respondent has no active plan to use the disputed domain name.

The Respondent has registered and is using the disputed domain name in bad faith. The Complainant's FERMOB trade mark does not have any meaning or significance, except in relation to the Complainant. Given the significance of the Complainant's trade mark and its repute, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's mark. Moreover, the misspelling of the Complainant's mark was intentionally designed to be confusingly similar to it and can be seen as evidence of bad faith. The fact that the Respondent has not been able to demonstrate any good faith activity and that it is not possible to conceive of any plausible actual or contemplated use of the disputed domain name by the Respondent that would not be illegitimate, establishes bad faith registration and use.

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

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Rights

The Panel finds that the disputed domain name is confusingly similar to the Complainant's FERMOB trade mark. For the purpose of the comparison, the generic Top-Level Domain ".com" is not taken into account as it is a technical requirement of registration. The disputed domain name contains the Complainant's mark in full, followed by an "s". Where a complainant's mark is recognizable within a domain name, the addition of other terms, irrespective of their meaning, will not prevent a finding of confusing similarity; see CAC Case No. 102382, MAJE v enchong lin.

Rights and legitimate interests

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services or has made demonstrable preparations to do so; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The fact that the disputed domain name does not presently resolve to an active website means that it not being used in connection with a bona fide offering of goods and services. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's passive holding of the domain name amount to making a legitimate, noncommercial or fair use of it.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The distinctive nature of the Complainant's FERMOB mark as at the date of registration is such that the Panel finds, on a balance of probabilities, that the Respondent registered the disputed domain name with an awareness of the Complainant and its mark and in order to take unfair advantage of that mark. The Panel finds the Respondent's registration of the disputed domain name in these circumstances in to have been in bad faith.

The inactive status of the disputed domain names does not prevent a finding of bad faith use under the doctrine of passive holding and the principles set out initially in the decision of Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. See also Intesa Sanpaolo S.p.A. v Leone Toscano, CAC Case No. 103819.

Factors which are typically considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

Applying these facts to the current circumstances, the Complainant has established that its mark is distinctive. Moreover, the Respondent has not submitted a response or provided any evidence of good faith use. Nor is it likely, having regard to the confusing similarity between the disputed domain name and the Complainant's mark, that the Respondent will put it to any plausible good faith use. Whilst the Respondent has not sought to conceal his identity through use of a privacy service, in circumstance where the other factors pointing towards bad faith passive holding are fulfilled, the Panel does not consider that the Respondent's non-use of the disputed domain name should be considered to be in good faith. Accordingly, the inactive status of the disputed domain name comprises bad faith use under the doctrine of passive holding.

The Panel therefore finds that the disputed domain name was both registered and is 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. **fermobs.com**: Transferred

PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2022-11-18

Publish the Decision
