

Decision for dispute CAC-UDRP-105291

Case number	CAC-UDRP-105291
Time of filing	2023-03-21 09:28:38
Domain names	fermobcontractunit.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	FERMOB
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	fermi contra
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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 owns several trademarks registrations for FERMOB, including:

- French trademark number 3243498, registered on 1 September 2003 in classes 11, 20 and 21;
- Europe trademark number 6952758, registered on 22 May 2008 in classes 11, 20 and 21; and
- International trademark number 829242, registered on 1 March 2004, in classes 11, 20 and 21.

FACTUAL BACKGROUND

The Complainant is a French company that designs, designs and manufactures metal and coloured outdoor furniture. It owns several trademark registrations for FERMOB that predate the registration of the disputed domain name. It also owns a portfolio of domain names, including <fermob.com> registered on 24 December 1996, and <fermobcontractunit.com>, registered on 28 July 2017.

The Respondent registered the disputed domain name <fermobcontractunit.com> on 27 February 2023 using a privacy service. The disputed domain name resolves to a parking page with sponsored links.

PARTIES CONTENTIONS

The Complainant asserts that the disputed domain name is confusingly similar to its trademark FERMOB and states:

- i. the disputed domain name includes the Complainant's trademark in its entirety;
- ii. the only difference between its trademark FERMOB and the disputed domain name is the addition of the term "CONTRACT UNLT"; and
- iii. there is a greater likelihood of confusion as the disputed domain name directly refers to the Complainant's website, <https://lp.fermobcontractunit.com/hotels-restaurants/>.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and states:

- i. the Respondent is not known as the disputed domain name;
- ii. the Respondent is not related in any way with the Complainant and the Complainant does not carry out any activity for, nor has any business with the Respondent; and the Respondent is neither licensed nor authorised to use of the Complainant's trademark FERMOB or apply for registration of the disputed domain name; and
- iii. the disputed domain name resolves to a parking page with commercial links and this is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith and states:

- i. the disputed domain name <fermobcontractunlt.com> is confusingly similar to its distinctive trademark FERMOB and was registered several years after the Complainant registered its trademark;
- ii. the addition of a misspelled version of the term "CONTRACT UNIT" refers directly to the Complainant's website <https://lp.fermobcontractunit.com/hotels-restaurants/>; and given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark; and
- iii. the disputed domain name resolves to a parking page with commercial links and the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

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.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

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

IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name is comprised of the Complainant's trade mark FERMOB, the misspelt term "contract unit" and the top-level domain ".com". The Complainant's trademark FERMOB is clearly recognisable in the disputed domain name. A domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP (see WIPO Case No. D2003-0888, *Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin*).

The words "contract unit" are words associated with the Complainant's business and are included in the Complainant's domain name <fermobcontractunit.com>. Adding the misspelt term "contract unit" to the Complainant's trademark, FERMOB, is insufficient to avoid a finding that the disputed domain name is confusingly similar to the Complainant's mark.

The top-level domain ".com" in the disputed domain name is a standard registration requirement. It does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirements of Paragraph 4(a)(i) of the Policy have been met.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent is not commonly known by the disputed domain name and is not authorised to use the Complainant's trademark, FERMOB. The disputed domain name is confusingly similar to the Complainant's trademark and resolves to a parking page with commercial links related to the Complainant and its activities. This use does not qualify as a bona fide use (see WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*).

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent now has the burden of demonstrating that he has relevant rights or a legitimate interest.

The Respondent has not filed a Response and there is no evidence to show that the Respondent has any relevant rights or legitimate interest in the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

REGISTERED AND BEING USED IN BAD FAITH

The disputed domain name is confusingly similar to the Complainant's trademark FERMOB. The Respondent registered the disputed domain name many years after the Complainant registered its trademark, FERMOB, and has used a privacy shield to hide his identity. He has not filed a Response, nor asserted any reason for incorporating the Complainant's trademark in the disputed domain name, nor for registering as the disputed domain name a misspelling of the Complainant's domain name <fermobcontractunit.com>. Given these factors, it is reasonable to infer that the Respondent registered the disputed domain name in bad faith with full knowledge of the Complainant's trademark.

Under paragraph 4(b)(iv) of the Policy, evidence of registration and use of the disputed domain name in bad faith includes where the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his 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 product or service on his website. The disputed domain name resolves to a parking page with sponsored links. There appears no reason for the Respondent to include these links other than to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's and its mark.

Taking these factors into account, the Panel concludes that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermobcontractunlt.com**: Transferred

PANELLISTS

Name **Veronica Bailey**

DATE OF PANEL DECISION 2023-04-21

Publish the Decision