

## Decision for dispute CAC-UDRP-105392

Case number **CAC-UDRP-105392**

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Time of filing **2023-04-26 09:59:47**

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Domain names **fermob.org**

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### 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 **SuperAspect LTD**

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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.

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#### IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- FERMOB (figurative), French trademark registraton No. 3243498, registered on 1 September 2003 for goods in classes 11, 20 and 21;
- FERMOB (word), European trademark registraton No. 6952758, registered on 22 May 2008, for goods in classes 11, 20 and 21;
- FERMOB, International trademark registraton No. 829242, registered on 1 March 2004, for goods in classes 11, 20 and 21.

The Complainant is also the owner of the domain name <fermob.com>, registered on 24 December 1996.

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#### FACTUAL BACKGROUND

The Complainant is a French company that designs and manufactures metal and colored outdoor furniture since 1989.

The disputed domain name was registered on the 28th of June 2022 and resolves to a webpage where the disputed domain name is offered for sale at 2495,00 USD.

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## PARTIES CONTENTIONS

The Complainant maintains that the disputed domain name is identical to the Complainant's trademark as the addition of the gTLD ".org" does not change the overall impression of the disputed domain name as being connected to the trademark FERMOB.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not known by the disputed domain name, that there is no relation between the Complainant and the Respondent, that the Respondent does not carry out any activity for, nor has any business with, the Respondent. In addition, the Respondent is not a licensee of the Complainant, nor the Complainant has granted the Respondent any authorization to make use of the Complainant's mark or to apply for the registration of the disputed domain name.

The disputed domain name resolves to a webpage where it is offered for sale for 2495,00 USD, which, in the Complainant's view, is a further confirmation of the fact that the Respondent lacks rights or legitimate interests in the disputed domain name.

In relation to bad faith, the Complainant maintains that the trademark FERMOB enjoys strong reputation and does not have any meaning except in relation to the Complainant. The disputed domain name has been registered several years after the registration of the Complainant's mark and is identical to it. It is therefore reasonable to conclude that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. Moreover, the Respondent is not making any active use of the disputed domain name, which is only offered for sale for the amount of 2495,00 USD. Accordingly, the Respondent registered the disputed domain name in bad faith, only to sell it for more than the out-of-pocket costs related to the disputed domain name.

The Respondent did not file a response.

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## 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).

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## 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).

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## 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).

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## 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.

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## PRINCIPAL REASONS FOR THE DECISION

### (a) Identical or Confusingly similar

The Panel notes that the Respondent has successfully proved that it is the owner of the trademark FERMOB, registered in various countries.

The disputed domain name <fermob.org> merely consists of the Complainant's trademark FERMOB, followed by the generic Top-Level Domain ("gTLD") ".org". As explained in section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), the assessment of confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. Here, disregarding the Top-Level Domain ("TLD") suffix, the disputed domain name is identical to the textual element of the Complainant's mark.

Therefore, the Panel is satisfied that the first requirement under the Policy is met.

(b) Rights or Legitimate interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Complainant states that the Respondent has not been authorised to register a domain name including the Complainant's trademark, nor to make use of this trademark in whatsoever manner. Moreover, the Respondent is not a licensee of the Complainant and has no business relation or other kind of relation with the Complainant. The Respondent does not appear to be commonly known by the disputed domain name.

The Complainant has also shown that the disputed domain name is not actively used, but resolves to a webpage where it is offered for sale at the amount of 2495,00 USD. As the Respondent does not appear to own any right over the term "fermob", which instead is protected as a registered trademark by the Complainant, the mere offer for sale of the disputed domain name, for an amount which is likely to exceed the out-of-pocket costs related to the disputed domain name, cannot amount to a legitimate, noncommercial or fair use of the disputed domain name, nor to a use in connection with a bona fide offering of goods and services.

In light of the foregoing, the Panel considers that the Complainant has made a prima facie case that the Respondent's lack of rights or legitimate interests in the disputed domain name. As a consequence, the burden of proof now shifts to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. In the absence of such proof, the Panel deems that the Complainant has successfully met the second requirement under the Policy.

(c) Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must establish both that the disputed domain name was registered in bad faith and that it has been used in bad faith (the so-called "conjunctive requirement"). The Complainant submits that the Respondent was likely aware of the Complainant's trademark FERMOB when it registered the disputed domain name. The Panel agrees with the Complainant.

Although there is not sufficient evidence in the file to conclude that the Complainant's trademark enjoys reputation, this trademark is certainly distinctive as it consists of a coined word deprived of any meaning and appears to be uniquely associated with the Complainant. As the Respondent lacks rights or legitimate interests in the disputed domain name for the reasons mentioned above, and because the disputed domain name is identical to the Complainant's distinctive trademark, the Panel is of the opinion that the disputed domain name was not registered by mere coincidence, but because the Respondent was aware of the Complainant and intended to target its FERMOB trademark. Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, the Panel has undertaken some limited factual researches in relation to the Respondent's possible knowledge of the Complainant's trademark at the time of the registration of the disputed domain name. In particular, the Panel has reviewed the Complainant's website and has noticed that the Complainant operates its own brand store in London, UK, which is where the Respondent has its seat. This finding corroborates the Respondent's knowledge of the Complainant and of the FERMOB mark at the time of the registration of the disputed domain name.

The registration of a domain name, identical to a third party's trademark, without any rights or legitimate interests and being aware of such rights amounts to registration in bad faith.

Regarding use in bad faith, the Panel notes that the Respondent is not making an active use of the disputed domain name, but offers it for sale for an amount which is likely to exceed the out-of-pocket costs related to it. As the FERMOB trademark is distinctive and uniquely associated to the Complainant, in the absence of any argument to the contrary by the Respondent, the Panel finds that the Respondent has been using the disputed domain name either to sell it to the Complainant or to any other interested entity, including a Complainant's competitor, or to divert Internet traffic, or for some other purpose that could be based on the confusion with the Complainant's trademark, such as phishing. Under the circumstances, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermob.org**: Transferred

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## PANELLISTS

Name	<b>Angelica Lodigiani</b>
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DATE OF PANEL DECISION 2023-06-02

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Publish the Decision

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