

Decision for dispute CAC-UDRP-105746

Case number CAC-UDRP-105746

Time of filing 2023-09-06 10:15:14

Domain names fermob.net

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization FERMOB

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Kyoung S Park

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of registered trade marks around the world that comprise or incorporate the term "FERMOB" including:

- French trade mark n° 3243498 registered on 1 September 2003 as a combined trade mark where the text element is "Fermob" in classes 11, 20 and 21;
 - International trade mark n° 829242 filed on 1 March 2004 for a figurative mark which predominantly takes the form of the term "Fermob" in stylised text in classes 11, 20 and 21. The mark has to at least some extent proceeded to registration in 10 territories; and
 - European trade mark n° 6952758 registered on 22 May 2008 for FERMOB as a work mark in classes 11, 20 and 21.
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FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant is a French company that has designed and manufactured metal and colored outdoor furniture since 1989.

It has owned the domain name <fermob.com> since 24 December 1996.

The Domain Name <fermob.net> was registered on 29 November 2009. It resolves to a parking page with commercial links where the Domain Name is offered for sale for 5900 EUR.

The term "FERMOB" is a contraction of French term "FER" ("steel") and MOB (for French term "Mobilier" – ie "Furniture") and has no independent meaning unrelated to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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 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 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

The Complainant clearly is the owner of various registered trade marks that comprise or incorporate the term "FERMOB". The Domain Name comprises this term combined with the ".net" generic Top-Level Domain. Given this, the trade mark is clearly recognisable in the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

The Complainant unhelpfully does not expressly describe when it started to use the term "FERMOB" in respect of this business, nor the extent of that use. That is not a trivial omission given that Whois details for the Domain Name show that it was first registered in November 1999. Nevertheless, there is no suggestion that the Complainant has used a term other than "FERMOB" as part of its corporate name since the date of incorporation in 1989, and the Panel is prepared to assume in the Complainant's favour that the <fermob.com> domain name was not just held as part of the Complainant's "portfolio" but was actively used by the Complainant not long after it was acquired in 1996. So far as use of the <fermob.com> domain name is concerned this is consistent with pages available on the Internet Archive that show such use since at least December 1998. The Panel considers it legitimate to rely upon this material notwithstanding that it did not form part of the Complainant's submissions (as to which see section 4.8 of the WIPO Overview 3.0).

With this in mind and taking into account that (a) there is an undisputed assertion in the Complaint that "FERMOB" has no independent meaning separate from the Complainant's business and mark, and (b) a person registering a ".net" domain name is likely to be aware of the equivalent ".com" domain name, the Panel accepts that the Respondent was likely to be aware of the Complainant's business and mark at the time the Domain Name was registered. Further, the Panel accepts by reason of the use that has been made of the Domain Name and the fact that it has been offered for sale that the Domain Name was registered with the

intention of either sale to the Complainant or with the intention of drawing internet users to a pay-per-click webpage operating from the Domain Name taking advantage of the Domain Name's association with the Complainant.

There is no right or legitimate interest in registering a Domain Name for such purposes and it provides positive evidence that no such right or legitimate interest exists. The registration and holding of a Domain Name for such a purpose also involves registration and use of a domain name in bad faith. The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(ii) and (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermob.net**: Transferred

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION **2023-10-05**

Publish the Decision
