# Decision for dispute CAC-UDRP-106167

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| Case number | CAC-UDRP-106167 |
| Time of filing | 2024-01-22 09:40:16 |
| Domain names | fsabicycle.com, bicyclefsa.com, fsabikepart.com |

## Case administrator

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| Name | Olga Slanařová (Case admin) |

## Complainant

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| Organization | TIEN HSIN INDUSTRIES CO., LTD. |

## Complainant representative

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| Organization | Convey srl |

## Respondents

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| Organization | LiPeijing |
| Name | Yu Jialin |
| Organization | JiangWenjian |

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 names.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademark registrations:

1. Italian registration No. 2016000023206 for “FSA”, registered since 27 December 2016 for the international class 12;
2. Australian registration No. 1416186 for “FSA”, registered since 24 March 2011 for the international class 12;
3. United States registration No. 4086754 for “FSA”, registered since 17 January 2012 for the international class 12;
4. European Union Trademark No. 018593698 for “FSA”, registered since 18 March 2022 for the international classes 9, 12, 25, 35;
5. European Union Trademark No. 004632915 for “FULL SPEED AHEAD”, registered since 1 September 2006 for the international class 12; and
6. European Union Trademark No. 010372241 for “FSA FULL SPEED AHEAD”, registered since 8 May 2012 for the international classes 9, 12, 25.

## FACTUAL BACKGROUND

The Complainant has headquarters in Taiwan and other key offices in the USA and Italy. Under the trademark FSA, the Complainant produces world class bicycle components for road cycling and mountain biking and supports many of the world's leading road and mountain bike teams.

The trademark FSA has its roots in 1992 when Douglas Chang decided to create a brand dedicated specifically to high-level bicycle components. He started the business in the USA with an office in California and, few years later, Douglas decided to invest in the European market in order to be closer to his customers. Today, FSA is renowned as one of the leading brands in the cycling industry. The Complainant collaborates with the world's finest riders and teams, and equips various professional cycling teams including those professional teams competing in the mountain bike disciplines.

In order to protect and promote its brand, the Complainant has been extensively using the FSA and Full Speed Ahead trademarks on all internet environments including and not limited to the complainant's official website <www.fullspeedahead.com> and its official accounts on the major social networks.

The disputed domain name <fsabicycle.com> was registered on 2 February 2023, the disputed domain name <fsabikepart.com> was registered on 12 February 2023 and the disputed domain name <bicyclefsa.com> was registered on 19 August 2023, all without authorization of the Complainant. The disputed domain names have been pointed to websites where allegedly Complainant's counterfeit products are offered for sale.

On 10 January 2024, the Complainant's representative sent a cease and desist letter requesting immediate cease of any use and the transfer of the disputed domain names to the e-mails indicated in the whois records of the disputed domain names <fsabicycle.com> and <fsabikepart.com>, but no response has been received.

The respective Registrars confirmed that the Respondents are the current registrants of the respective disputed domain names, and that the language of the registration agreements is, in all of the cases, English.

The Respondents have not filed any Response.

## PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

THE DISPUTED DOMAIN NAMES ARE IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain names incorporate the whole of the Complainant's trademark FSA (particularly famous in the cycling sector) and the fact that they include non-distinctive elements, such as "bicycle", "bike part", "bicycle" and the generic Top-Level Domain .com does not affect the confusing similarity. The combination of the trademark FSA with generic terms, related to the cycling sector, could suggest improperly to consumers that the disputed domain names and corresponding websites might be controlled by the Complainant or with the Complainant's authorization, especially given the offering of counterfeit products of the Complainant on these websites.

RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAMES

The Complainant argues that it has made a prima facie case that the Respondents have no rights or legitimate interest in respect of the disputed domain names. The Respondents are not a licensee, authorized agent of the Complainant or in any other way authorized to use Complainant's trademark. Specifically, the Respondents are not authorized resellers of the Complainant and have not been authorized to register and use the disputed domain names. Further, the Complainant believes that the Respondents are not commonly known by the disputed domain names as individuals, business or other organization and their family names do not correspond to FSA or the disputed domain names.

The Complainant submitted evidence that the disputed domain names are redirected by the Respondents to websites where the Complainant's trademark FSA is published, and alleged counterfeit products are offered for sale, without there being any disclaimers as to the Respondents' lack of relationship with the Complainant. The Respondents' use of the disputed domain names can be considered neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use. The sale of counterfeit products (evidenced by significantly lower prices than the original products) is circumstantial evidence supporting the illegal Respondents' activity and, consequently the absence of rights or legitimate interests in respect of the disputed domain names.

THE DISPUTED DOMAIN NAMES WERE REGISTERED AND ARE BEING USED IN BAD FAITH

The Respondents could not have possibly ignored the existence of the Complainant's trademark, confusingly similar to the disputed domain names. The Respondents' choice of the generic words "bicycle", "bike" and "part" in registering the disputed domain names

was made to target the Complainant. By virtue of the extensive use and distinctiveness, it is inconceivable that the Respondents were unaware of the existence of the Complainant's registered trademark at the time of the registration of the disputed domain names. The fact that replicas of FSA items are offered for sale on the websites corresponding to the disputed domain names indicates that the Respondents have been fully aware of the Complainant's mark's reputation and association with the Complainant and that the purpose in registering the disputed domain names, which incorporate the Complainant's trademark FSA, was solely to capitalize on the reputation of Complainant's marks by diverting Internet users seeking products under the FSA mark to their own commercial websites.

The Complainant further points to other circumstances, i.e. that the items are sold disproportionately below market value (more than half of the Complainant's prices), the misappropriation of copyrighted images from the Complainant's website, the concealing the Respondents' identity both on the whois and on the websites corresponding to the disputed domain names; which all are supporting of the finding that the disputed domain names were registered and have been used in bad faith.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown 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 Complainant made a request to consolidate proceedings against multiple registrants in a single administrative proceeding pursuant to Paragraph 3(c) or 10(e) of the Rules.

The disputed domain names are registered by different registrants (Respondents): LiPeijing (China) is the registrant of <fsabicycle.com>; Yu Jialin (China) is the registrant of <bicyclefsa.com>; and JiangWenjian (China) is the registrant of <fsabikepart.com>.

The Complainant believes that the disputed domain names, which all incorporate the trademark FSA, are under the control of a single individual or entity or, at least, reflective of a group of individuals acting in concert. The Complainant particularly notes that the disputed domain names share the following similarities:

(a) same hosting provider Cloudflare Inc.;

(b) same extension of the domain names .com;

(c) sharing similar lay-outs of the websites;

1. d) sharing the same opening hours of the shops even if the shops are in different states;

(e) sharing the same page dedicated to "Contact form";

(f) sharing the same footer of the websites;

(g) including the same ways of payment (VISA, PayPal, Stripe, Mastercard and Cash on delivery);

(h) the pattern of the copyright "Copyright 2024 © www. + domain name"; and

(i) sharing the same products offered for sale using the picture taken by the Complainant's website.

Under Paragraph 3(c) of the Rules, "the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder". Under Paragraph 10(e) of the Rules, "a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules".

The Panel believes that the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the disputed domain names or corresponding websites, and fairness and equitableness of the consolidation to all parties.

In particular, the Panel considers the consolidation as appropriate because of:

1. the registrants' identical country of origin (China);
2. the striking similarities of content and layout of the websites corresponding to the disputed domain names;
3. the fact that the registrants have targeted a specific sector and mark;
4. the naming patterns in the disputed domain names being <mark+generic term> or <generic term+mark>;
5. the use of the same photographs apparently taken from the Complainant's official website; and
6. same hosting provider.

On the balance of probabilities and considering the above circumstances, it is plausible that the disputed domain names are indeed under common control. Refusal of the consolidation request would likely cause the Complainant a greater burden and would interfere with the overall due expedition of the UDRP administrative proceeding. The Respondents have not contested or provided any rebuttal regarding the consolidation request made by the Complainant and thus failed to use the opportunity to make its submissions on the validity of the consolidation together with its substantive arguments.

The Panel therefore finds that consolidation is fair and equitable to all parties, and that it is in the interest of procedural efficiency.

With all that in mind, 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

This is a proceeding under Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (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 respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

Regarding the first element, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The disputed domain names clearly contain the Complainant's brand "FSA" in its entirety. The combination of the FSA brand with generic terms "bicycle" and "bikepart", clearly alluding to the cycling sector being the Complainant's main area of operation and also the field where the FSA brand is well regarded, does not escape the finding of similarity. On the contrary, it makes the risk of confusion between the disputed domain names and the Complainant's earlier rights only stronger.

As regards the second element, the Respondents have not filed a Response and have neither provided any other information that would oppose the Complainant's allegations. Thus, the Complainant successfully presented its prima facie case. The Respondent is indeed not commonly known by the disputed domain names. Given the sales of counterfeit FSA products on the respective websites, the disputed domain names have not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use. The Panel, therefore, holds that the Respondents have no rights or legitimate interest in the disputed domain names.

With respect to the third element, the Panel essentially agrees with the Complainant's submission that the Respondents could not have possibly ignored the existence of the Complainant's trademark and that the Respondents' choice of the generic words "bicycle", "bike" and "part" in registering the disputed domain names was made to target the Complainant. The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "FSA". It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith. In addition, the Panel holds that the Complainant submitted evidence of several other signs of the Respondents' bad faith in registration and use of the disputed domain names, namely: (a) use of the "FSA" brand and logo on the respective websites; (b) creating such contents on those websites that make an impression of the Complainant's own or authorized website and e-shop; (c) offering products on those websites that are apparently counterfeits of the Complainant's products; and (d) not responding to the Complainant's cease-and-desist letter. It seems very clear that the Respondents must have had actual knowledge of the Complainant's trademark and that they have attempted to attract Internet users for commercial gain to their own website by use of the Complainant's trademark. In view of the Panel, there is no plausible reason for the Respondents to register the disputed domain names in good faith.

## FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fsabicycle.com**: Transferred
2. **bicyclefsa.com**: Transferred
3. **fsabikepart.com**: Transferred

## PANELLISTS

| Name | **Vojtěch Chloupek** |
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DATE OF PANEL DECISION 2024-03-21

Publish the Decision