Decision for dispute CAC-UDRP-107317

Case number	CAC-UDRP-107317
Time of filing	2025-02-14 09:41:49
Domain names	fermob.online

Case administrator

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

Complainant

Organization	FERMOB

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Domain Name Privacy Inc

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

In these proceedings, the Complainant relies on the following trademarks:

- Fermob (fig.), French Trademark Registration No. 3243498, filed on September 1, 2003, in the name of FERMOB (the Complainant), duly renewed;

- Fermob (fig.), International Registration No. 829242, filed on March 1, 2004, in the name of FERMOB (the Complainant), duly renewed; and

- FERMOB (word), EUTM No. 006952758, filed on May 22, 2008, in the name of FERMOB (the Complainant), duly renewed, which covers the Republic of Cyprus, where the Respondent is apparently located.

It is worth noting that, the Complainant owns a few other trademarks in various countries, which have not been cited in these proceedings.

FACTUAL BACKGROUND

According to information provided by the Complainant and not refuted by the Respondent, the Complainant is a French company

that designs and manufactures metal and colored outdoor furniture since 1989. Ever since, the Complainant has become a quite large enterprise, selling its goods in many countries around the world.

The Complainant owns a fair-sized portfolio of trademarks including the wording "FERMOB", among which a French trademark registration dating back to 2003. It also owns quite a few related domain names, like <fermob.com> since December 24, 1996.

The disputed domain name <FERMOB.ONLINE> was registered on January 27, 2025 by the Respondent, as confirmed by the Registrar (NB: The Registrar mentions January 26, 2025, in its verification reply message to the CAC).

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name is confusingly similar to its FERMOB trademark, as it fully incorporates this identical trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. As to the gTLD ".online", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name, the Complainant has never licensed its trademark to the Respondent and the Respondent is not known as the disputed domain name.

According to the Complainant, given the distinctiveness and reputation of its FERMOB trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to sell it, most probably to the Complainant itself, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has failed to use the domain name, which is considered as a clear indication of bad faith. It is, indeed, impossible to conceive any actual or contemplated use that would not be illegitimate.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT

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).

The disputed domain name consists of the Complainant's whole registered trademark ("FERMOB"). Indeed, the disputed domain name is identical and thus confusingly similar to the trademark of the Complainant.

As far as the gTLD ".online" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

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

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the FERMOB trademark in a

domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the disputed domain name resolves to an inactive website and therefore the Respondent cannot demonstrate any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defence. However, the Respondent has chosen not to file a Response.

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

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark and the fact that the disputed domain name fully incorporates this trademark, it is quite evident that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third-party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to an inactive website. Such passive use of a domain name shows bad faith under some circumstances, such as when the complainant’s trademark has such a strong reputation that it is widely known, and when it is impossible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate. This fact is to be combined with the full incorporation of the Complainant’s reputable trademark in the disputed domain name. These are the circumstances that apply in the case at issue, to a fair extent. The trademark FERMOB enjoys wide and extensive reputation in the furniture industry. Therefore, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate. This conclusion is further reinforced by the proven fact that the Respondent has publicly offered the disputed domain name for sale at the price of USD 2888.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 disputed domain name wholly incorporates and is identical to the Complainant's trademark. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's well-known trademark. His passive holding of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermob.online**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2025-03-21

Publish the Decision