Decision for dispute CAC-UDRP-107442

Case number	CAC-UDRP-107442
Time of filing	2025-03-27 13:31:40
Domain names	fermobcontractunits.com

Case administrator

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

Complainant

Organization	FERMOB

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Collins Moshe

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states that it owns “numerous registered trademarks ‘FERMOB’,” including the following, for which Complainant has provided documentation:

- French Reg. No. 3243498 for FERMOB (registered September 1, 2003);
- Int’l Reg. No. 829242 for FERMOB (registered March 1, 2004);
- EU Reg. No. 6952758 for FERMOB (registered January 29, 2009);

These registrations are referred to herein as the “FERMOB Trademark.”

FACTUAL BACKGROUND

Complainant states that it is “a French company that… designs and manufactures metal and colored outdoor furniture since 1989.” Complainant states, and provides documentation to support, that it is the registrant of the domain names <fermob.com> (registered December 24, 1996) <fermobcontractunit.com> (registered since July 28, 2017).

The Disputed Domain Name was created on March 21, 2025, and resolves to a parking page that says, “Your website is ready to go!” Complainant also notes, and provides evidence to support, that “MX servers are configured” for the Disputed Domain Name.

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that it has rights in the FERMOB Trademark based on the registrations listed in the Complaint, including those cited above; and that the Disputed Domain Name is confusingly similar to the FERMOB Trademark because "the domain name includes it in its entirety," "the addition of the trademark terms 'CONTRACT' and 'UNITS' is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark FERMOB," "the addition of the terms 'CONTRACT' and 'UNITS' reinforces the risk of confusion as it refers to the Complainant's domain name <fermobcontractunit.com>," and "the addition of the suffix '.COM' does not change the overall impression of the designation as being connected to the trademark FERMOB."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "Respondent is not known as the disputed domain name" because "the Whois information [is] not similar to the disputed domain name"; "the Respondent has no rights or legitimate interests in respect of the domain name <fermobcontractunits.com> and he is not related in any way with the Complainant" and "[t]he Complainant does not carry out any activity for, nor has any business with the Respondent"; "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark FERMOB, or apply for registration of the disputed domain name by the Complainant"; and because "the disputed domain name resolves to a parking page… Respondent did not make any use of disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name," which "proves a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "Respondent has registered the disputed domain name several years after the registration of the trademark FERMOB by the Complainant, which has established a strong reputation while using this trademark"; "all results from a Google search on the term 'FERMOB CONTRACT UNITS' refer to the Complainant"; "given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark"; the passive holding doctrine does not prevent a finding of bad faith; and the creation of MX records "suggests that it may be actively used for email purposes."

No administratively compliant response has been filed.

RIGHTS

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 UDRP).

NO RIGHTS OR LEGITIMATE INTERESTS

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 UDRP).

BAD FAITH

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i)

The trademark citations and documentation provided by Complainant are sufficient to establish that Complainant has rights in the FERMOB Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to these trademarks, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "fermobcontractunits") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11.1.

Here, the Disputed Domain Name contains the FERMOB Trademark in its entirety. As set forth in section 1.7 of WIPO Overview 3.0: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

As to the addition of the words "contract" and "units," section 1.8 of WIPO Overview 3.0 says: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." The panel finds that, despite inclusion of the words "contract" and "units," the FERMOB Trademark is recognizable within the Disputed Domain Name.

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "Respondent is not known as the disputed domain name" because "the Whois information [is] not similar to the disputed domain name"; "the Respondent has no rights or legitimate interests in respect of the domain name <fermobcontractunits.com> and he is not related in any way with the Complainant" and "[t]he Complainant does not carry out any activity for, nor has any business with the Respondent"; "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark FERMOB, or apply for registration of the disputed domain name by the Complainant"; and because "the disputed domain name resolves to a parking page… Respondent did not make any use of disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name," which "proves a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control 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 on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that Complainant has established its prima facie case and, without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

As set forth in section 3.1.4 of WIPO Overview 3.0: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar… to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." That is applicable here. Further, construction of the Disputed Domain Name to include the words "contract" and "units" in addition to the FERMOB Trademark – rendering the Disputed Domain Name almost identical to Complainant's own domain name <fermobcontractunit.com>, clearly creates a likelihood of confusion pursuant to paragraph 4(b)(iv) of the UDRP.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermobcontractunits.com**: Transferred

PANELLISTS

Name	**Douglas Isenberg**

DATE OF PANEL DECISION 2025-05-06

Publish the Decision