Decision for dispute CAC-UDRP-107755

Case number	CAC-UDRP-107755
Time of filing	2025-07-17 11:24:10
Domain names	fermobfrance.com

Case administrator

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

Complainant

Organization	FERMOB

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	ma boutique

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

The Complainant owns the following registrations for the FERMOB trademark:

French trademark n° 3243498 registered on 1 September 2003;

International trademark n° 829242 registered on 1 March 2004;

EU trademark n° 6952758 registered on 29 January 2009.

FACTUAL BACKGROUND

The Complainant) is a French company that, since 1989, has designed and manufactured metal and coloured outdoor furniture and accessories such as tables, chairs, loungers, and lamps, all under the trademark FERMOB which has no generic or descriptive meaning. The Complainant also uses the domain name <fermob.com> for its website and email address.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name, registered on 30 June 2025, is confusingly similar to the Complainant's trademark as it includes the trademark in its entirety and adds only the geographic term "France" as well as the ".com" TLD.

The Respondent has no rights or legitimate interests in the disputed domain name as it is not commonly known by the domain name and it the disputed domain name resolves to a website that impersonates the Complainant and claims to sell outdoor furniture and accessories, effectively competing with the Complainant.

The disputed domain name was registered and used in bad faith based on the Respondent's prior knowledge of the Complainant's trademark and the above-mentioned website activity by the Respondent.

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).

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).

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).

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

1. Confusing Similarity

The Complainant has established its rights to the FERMOB trademark through its submission into evidence of various trademark registration certificates, the earliest of which is dated on 9 September 2003.

The disputed domain name combines the Complainant's trademark with the geographic term "France" and the ".com" gTLD. These additions to the term "FERMOB" do not dispel the confusing similarity between the disputed domain name and the Complainant's trademark. Avast Software s.r.o. v. Milen Radumilo, 102384 (CAC, 19 April 2019) ("it is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity.").

Also, the extension ".com" typically adds no meaning or distinctiveness to a disputed domain name and may most often be disregarded in the Paragraph 4(a)(i) analysis. Novartis AG v. Wei Zhang, 103365 (CAC, 9 December 2020) ("it is generally accepted that the addition of the top-level suffix in the domain name (e.g., '.com') is to be disregarded under the confusing similarity test").

Accordingly, the Panel finds that the Complainant has rights to its claimed trademark and that the addition of a descriptive word thereto in the disputed domain name is insufficient to avoid a finding that it is confusingly similar to the Complainant's trademark. Thus, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

2. Rights Or Legitimate Interests

Pursuant to Paragraph 4(a)(ii) of the Policy, the complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in the disputed domain name. Cephalon, Inc. v. RiskIQ, Inc., 100834 (CAC, 12 December 2014). Once this burden is met, it then shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name. Paragraph 4(c) of the Policy offers the respondent several examples of how to demonstrate its rights or legitimate interests in the disputed domain name.

With reference to Paragraph 4(c)(ii) of the Policy the Complainant states that "[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.". The Respondent has not participated in this case and so it does not contest this. As such, the Panel concludes that the Respondent is not affiliated with the Complainant, nor is it authorized or licensed to use the Complainant's trademark or to seek registration of any domain name incorporating the asserted trademark. Furthermore, the Registrar for the disputed domain name identifies the Registrant Name as "moreau mari" and the Registrant Organization as "ma boutique". There is no evidence that the Respondent is known otherwise and its use of the Complainant's trademark on its website does not, alone, support a different conclusion. Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com", D2000-0847 (WIPO, 16 October 2000) ("use which intentionally trades on the fame of another" should not be considered. "To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy."). Based upon the available evidence in this case, the Panel cannot conclude that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. As shown by the screenshots submitted into evidence, the disputed domain name resolved to a website that claims to offer outdoor furniture and accessories under the name FERMOB. Using a confusingly similar domain name to impersonate and pass oneself off as a complainant is not a bona fide offering of goods or services or a legitimate non-commercial or fair use per Paragraphs 4(c)(i) or (iii) of the Policy. See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund, FA 1790949 (FORUM, 9 July 2018) (no right or legitimate interest found where "the Domain Name, deliberately and inherently impersonates the Complainant and its trade marks."). Here, the Complainant asserts that "[t]he Respondent used the disputed domain name to disrupt Complainant's business and to attract users by impersonating the Complainant, as the Respondent identified itself as 'FERMOB'". From the submitted screenshots of the Respondent's website the Panel notes that it displays the Complainant's graphic log at the top followed by an image of an outdoor chair, table, and bench set overlayed with the text "Ventes Privées Fermob - Nos Best-Sellers en Promotion !" (the English translation of which is "Fermob Private Sales - Our Best-Sellers on Sale!"). Further images of the Complainant's products are shown and below each appears one price in a strike-through grey font followed by a significantly lower price in a red font. Finally, the bottom of the page displays a customer service e-mail address of "contact@fermobfrance.com". The Complainant's assertion that this use of its trademark is for the purpose of impersonation and competition appears well-founded and the Respondent has not filed a Response or made any other submission in this case to offer an alternative explanation for its actions. As the Complainant has made out a prima facie case that has not been rebutted by the Respondent, upon a preponderance of the evidence before it the Panel finds that the Respondent fails to make a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name under Paragraphs 4(c)(i) or (iii) of the Policy.

3. The disputed domain name were registered and used in bad faith

The Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., D2015-2202 (WIPO, 12 February 2016) ("The standard of proof under the Policy is often expressed as the 'balance of the probabilities' or 'preponderance of the evidence' standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

The Complainant first asserts that “Respondent was aware of its trademark and intended to create a likelihood of confusion with the Complainant’s mark by impersonating the Complainant.”. Actual knowledge of a complainant’s trademark may form the foundation upon which to build a case for bad faith under Policy paragraph 4(a)(iii).). See, Xiaomi Inc. v. Nguyễn Đức Đạt (N/A), UDRP-107237 (CAC, 12 February 2025) (“The Panel infers that the Respondent had actual knowledge of the Complainant’s rights in the XIAOMI mark at the time of registration, as demonstrated by the Respondent’s use of the mark, its offering of competing products, and the widespread recognition of the Complainant’s trademark.”). The Complainant asserts that “given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.”. While the FERMOB trademark does appear to be distinctive, the Complainant has submitted no evidence of its scope or reputation beyond a screenshot of its own <fermob.com> home page. The Panel cannot, from this very limited evidence, determine whether the Respondent must have known of the trademark based on its reputation alone. However, as noted in the previous section, the Complainant provides a screenshot of the Respondent’s website which impersonates the Complainant in what appears to be a rather suspicious offering of outdoor furniture and accessories. From such directly targeting activity, the Panel finds sufficient evidence to conclude that the Respondent had actual knowledge of the Complainant’s rights in the FERMOB trademark at the time that it registered the disputed domain name.

Next, the Complainant argues that the Respondent registered and used the disputed domain name in bad faith and seeks to pass itself off as and compete with the Complainant. Using a confusingly similar disputed domain name to pass oneself off as a complainant can demonstrate bad faith under Paragraphs 4(b)(iii) and (iv) of the Policy. See Harley-Davidson Motor Company Inc. v. Liu Peng et al., UDRP-106275 (CAC, 27 March 2024) (“use of a disputed domain name to pass off as a complainant and offer competing or counterfeited goods may be evidence of bad faith per Policy paragraph 4(b)(iii) and (iv).”). Upon a review of the screenshots of the <fermobfrance.com> website provided by the Complainant, the Panel notes that the site makes generous use of the FERMOB trademark and its associated graphic logo and purports to offer for sale, at greatly discounted prices, outdoor furniture and accessories for sale, some items of which also appear on the Complainant’s legitimate website. This supports the Complainant’s claim of impersonation and disruption of its business. The Respondent has not participated in this case to explain its actions and so, based upon a preponderance of the available evidence, the Panel finds it highly likely that the Respondent registered and used the disputed domain name in bad faith by competing with the Complainant and seeking commercial gain through impersonation of the Complainant and confusion with its trademark, under Paragraphs 4(b)(iii) and (iv).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fermobfrance.com**: Transferred

PANELLISTS

Name	**Steven Levy**

DATE OF PANEL DECISION 2025-08-11

Publish the Decision