

ADMINISTRATIVE PANEL DECISION

Ferm Living ApS v. hffmyh nhkhg
Case No. D2024-0194

1. The Parties

The Complainant is Ferm Living ApS, Denmark, represented by Aera A/S, Denmark.

The Respondent is hffmyh nhkhg, China.

2. The Domain Name and Registrar

The disputed domain name <fermliveing.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2024. On January 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 19, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2024.

The Center appointed David Stone as the sole panelist in this matter on February 28, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Denmark-based company established in 2006 which produces and sells a wide range of furnishings, including furniture, works of art, and other decorative accessories. The Complainant's products are distributed in over 75 countries.

The Complainant owns numerous registered trademarks comprising FERM LIVING in more than 40 countries, including the following (the "Marks"):

- FERM LIVING: International registration no. 1391990 (designating, inter alia, China), registered on August 16, 2017, in international classes 8, 11, 16, 20, 21, 24, 25, 27, 28, and 35;
- FERM LIVING: European Union Trademark (EUTM) registration no. 16389439, registered on September 7, 2017 in international classes 6, 8, 11, 16, 18, 20, 21, 24, 25, 27, 28, and 35; and
- **ferm**: International registration no. 1228352 (designating, inter alia, China), registered on March 26, 2014, in international classes 11, 16, 20, 21, 24, 27, 28, and 35.

The Complaint includes selected trademark certificates and a full list of FERM LIVING Marks registered in jurisdictions around the world. Each of the Marks predate the registration of the disputed domain name by the Respondent, often by several years.

Among other domain names, the Complainant is the owner of the domain name <fermliving.com>, where it maintains a website promoting and selling its furnishings.

The disputed domain name was registered on December 11, 2023. The Respondent registered their name as "hffmyh nhkhg" which appears to be gibberish. The Respondent is maintaining a website at the disputed domain name which (i) contains in the page title a statement that it is the official website of the Complainant, and (ii) displays prominently at least one image of the Complainant's goods. However, at the time of this Decision, the goods being sold on the website at the disputed domain name all appear to be motorcycle parts and accessories.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that, under the first element, the addition of the letter "e" in the disputed domain name <fermliveing.shop> represents a deliberate, hardly noticeable misspelling that does not provide sufficient distinction from the Marks and its domain name <fermliving.com>. The Complainant says that the disputed domain name is a classic typosquatting case, showing the Respondent's intention to confuse email recipients and misleadingly give an impression of connection with the Complainant.

Under the second element, the Complainant contends that it is not in any way affiliated with the Respondent or the disputed domain name, nor has the Complainant permitted the use of its Marks. The Respondent does not own any service marks or word marks that reflect the disputed domain name. Further, the use of a statement that the Respondent's website is "The official website of the Danish Design Furniture, Accessories

and Lamps - ferm LIVING” represents the website as being an official website of the Complainant when it is not. The Complainant contends that this is an indication that the Respondent lacks rights or legitimate interests in the disputed domain name.

Under the third element, the Complainant contends that it is a renowned company with well-reputed trademarks. The Respondent must have known of the Marks and the Complainant’s business and could not have subsequently used “fermliveing” for any reason other than to trade-off the goodwill and reputation of the Complainant’s Marks or otherwise create a false association, sponsorship or endorsement with the Complainant.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Marks are recognizable within the disputed domain name. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. Accordingly, the disputed domain name is confusingly similar to the Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

Although the addition of other terms here, the generic Top-Level Domain “.shop” and the letter “e” may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered the confusingly similar disputed domain name using the nonsensical name "hffmyh nhkhg". Once the Respondent had acquired the disputed domain name, it created a website at that domain name which (i) claims in terms to be the official website of the Complainant; (ii) uses at least one image of the Complainant's products prominently on the website; and (iii) sells motorcycle parts and accessories.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos) to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Panels have moreover found that evidence of a respondent seeking to cause confusion supports a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark. [WIPO Overview 3.0](#), section 3.1.4.

The disputed domain name comprises a typo of the Marks and is confusingly similar for the reasons already discussed. The Panel finds that the mere registration of the disputed domain name by the Respondent is at least indicative of bad faith due to the widespread use of the Complainant's Marks and the lack of any credible, good-faith reason for the Respondent's choice of the disputed domain name. The Panel also finds that the Respondent's use of seemingly random strings of letters in place of its name was most likely an attempt to conceal the Respondent's identity, and is strongly suggestive of bad faith.

Further, the Panel finds that the content of the website at the disputed domain name is strongly suggestive of bad faith because it is evidence of the Respondent seeking to cause confusion. The statement on the Respondent's website that it is the official website of the Complainant is false. The prominent use of at least one image of the Complainant's products, while marketing entirely different products, shows an intention by the Respondent to confuse and thereby attract users to its website. Accordingly, the website's content does not confer on the Respondent any rights or legitimate interests in the disputed domain name (and, as already discussed under the second element, the Respondent has not rebutted the Complainant's prima facie case that the Respondent has no such rights or legitimate interests).

Furthermore, the Respondent has not attempted to refute any of the Complainant's contentions, which casts additional doubt on the nature of its conduct. [WIPO Overview 3.0](#), section 3.2.1.

The Panel concludes that the actions of the Respondent in choosing the disputed domain name and its website content were aimed at attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant and its Marks. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <fermliveing.shop> be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: March 13, 2024