

## **ADMINISTRATIVE PANEL DECISION**

Ferm Living ApS v. Phjdu Txhs

Case No. D2023-0512

### **1. The Parties**

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

The Respondent is Phjdu Txhs, Hong Kong, China.

### **2. The Domain Name and Registrar**

The disputed domain name <shopfermliving.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Protection Services, Inc.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 7, 2023 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 February 8, 2023.

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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on March 9, 2023. 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 Danish company based in Copenhagen, and specialized in the manufacturing and sales of furnishings and interior design since its foundation in 2006. The products of the Complainant are sold in more than 75 countries worldwide.

The Complainant is the owner of *inter alia* the following trademark registrations (hereafter jointly referred to as the “Trademarks”):

- Danish trademark registration No. VR 2007 00835 for FERM LIVING registered on March 27, 2007;
- Danish trademark registration No. VR 2014 00497 for  registered on March 3, 2014;
- International Registration No. 1228352 for  registered on March 26, 2014, with designation of *inter alia* Australia, China, and Japan;
- International Registration No. 1391990 for FERM LIVING registered on August 16, 2017, with designation of *inter alia* Australia, China, and Japan.

Further, it is undisputed that the Complainant is the holder of the domain name <fermliving.com>.

The Domain Name was registered on September 7, 2022. The Domain Name resolves to an active website that appears to mimic the Complainant’s website, and to purportedly offer for sale the Complainant’s products at discounted prices.

#### 5. Parties’ Contentions

##### A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following main factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to the Trademarks. The Trademarks are incorporated in the Domain Name in its entirety with the mere addition of the descriptive term “shop” and the generic Top-Level Domain (“gTLD”) “com”. Consumers may therefore believe that the website connected to the Domain Name is an official website of the Complainant or connected to the Complainant.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent does not own any trademarks that reflect the Domain Name and is not commonly known by the Domain Name. In particular, the relevant public will be led to believe that the website is owned by or related to the Complainant. According to the Complainant, this use does not constitute a fair or noncommercial use or *bona fide* offering of goods or services and it is clear that Respondent is deliberately creating confusion with the Complainant’s business with the intent of commercial gain. Moreover, the Complainant has not licensed or otherwise permitted the Respondent to use its Trademarks, or to apply for any domain name incorporating the Trademarks.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. The Respondent is using the Domain Name to attract Internet users to its website, with the intention to profit from the goodwill and reputation related to the Complainant's Trademarks, or otherwise create a false association, sponsorship or endorsement with the Complainant. Furthermore, it is apparent from the composition of the Domain Name that the Respondent must have known of the Complainant's Trademarks and its business. By incorporating the Complainant's Trademarks in their entirety and by directly or indirectly implicating on the website that the website is an official shop of the Complainant, it is clear that the Respondent intended the Domain Name to be confused with the Complainant's Trademarks.

## **B. Respondent**

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

## **6. Discussion and Findings**

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks or their dominant element FERM LIVING, are incorporated in their entirety and clearly recognizable in the Domain Name. The addition of the gTLD ".com" and the term "shop" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to address the *prima facie* case thus established by the Complainant. Furthermore, based on the record before it including the use of the disputed domain name as described under section 4 above, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Moreover, the Domain Name is composed of the Trademarks plus an additional term “shop”, which carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) of the Policy is thereby fulfilled.

## **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant’s rights to the Trademarks predate the registration date of the Domain Name. The Panel agrees with the Complainant that based on the record before it, it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant’s activities and its Trademarks under which the Complainant is doing business. This is reinforced by the fact that the Trademarks are incorporated in their entirety in the Domain Name and that the Trademarks are depicted on the website to which the Domain Name resolves.

In light of the lack of any rights or legitimate interests in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks.

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name signal an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainant. This is reinforced by the fact that the disputed domain name resolves to a website displaying the Trademarks and purportedly offering for sale the Complainant’s products at discounted prices, however, the Respondent does not provide any information on its (non-existent) relationship with the Complainant, which creates the false impression of an affiliation with the Complainant (section 3.2.1, [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

## 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 Domain Name <shopfermliving.com> be transferred to the Complainant.

*/Gregor Vos/*

**Gregor Vos**

Sole Panelist

Date: March 27, 2023