

## **ADMINISTRATIVE PANEL DECISION**

Ferm Living ApS v. Manlidy, GNN

Case No. D2023-1750

### **1. The Parties**

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

The Respondent is Manlidy, GNN, Singapore.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 21, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 April 22, 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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on May 23, 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 is active in the field of manufacturing and selling of furnishings and interior design items. The Complainant was founded in 2006 and currently sells its products in over 75 countries under its FERM LIVING trade mark. The Complainant owns trade mark registrations for its FERM LIVING mark in numerous jurisdictions, including International Trade Mark Registration No. 1391990 FERM LIVING in classes 08, 11, 16, 20, 21, 24, 25, 27, 28 and 35 with registration date August 16, 2017, designating the Respondent's country of Singapore, amongst others.

The Domain Name was registered on February 15, 2023 and resolves to a website entitled "ferm LIVING", featuring a replica of the Complainant's logo and purportedly offering the Complainant's products for sale at discounted prices using the Complainant's product names and imagery.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its FERM LIVING mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used to impersonate the Complainant for the Respondent's commercial gain.

##### B. Respondent

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

#### 6. Discussion and Findings

##### A. Identical or Confusingly Similar

The Complainant's registered FERM LIVING mark is wholly contained within the Domain Name with the addition of the dictionary term "new". Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (including descriptive terms) does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

##### B. Rights or Legitimate Interests

The Complainant's mark was registered and used extensively for many years prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's website, including use of the Complainant's distinctive logo, product names and imagery, is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13.1). To the extent that the Domain Name's website might be considered that of a reseller of the Complainant's products, it does not meet the requirements of the well-known Oki Data test given that the site does not accurately and prominently disclose the Respondent's relationship with the Complainant (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#) at section 2.8).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

### C. Registered and Used in Bad Faith

Considering the facts canvassed above, the Domain Name's website clearly and intentionally impersonated the Complainant. In light of this and the composition of the Domain Name featuring the Complainant's mark, the Respondent must have had the Complainant in mind when registering and using the Domain Name. It is clear in these circumstances that the Respondent sought to impersonate the Complainant for commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy (*Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)).

The Panel has independently established that at least one security vendor has flagged the Domain Name for malicious activity, which is an indicator of bad faith (*The Commissioners for HM Revenue and Customs v. WhoisGuard Protected, WhoisGuard, Inc. / Hoshyar Marshall*, WIPO Case No. [D2021-0344](#)).

The Panel has also independently established that the Respondent has been found, under the Policy, to have lost at least 15 prior UDRP cases as respondent. The Respondent is a serial cybersquatter and this case appears to be a continuation of that pattern.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name, <newfermliving.com>, be transferred to the Complainant.

/Jeremy Speres/

**Jeremy Speres**

Sole Panelist

Date: June 2, 2023