

ADMINISTRATIVE PANEL DECISION

Ferm Living ApS v. Theresa Chavez
Case No. D2024-0041

1. The Parties

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

The Respondent is Theresa Chavez, United States of America.

2. The Domain Name and Registrar

The disputed domain name <fermlving.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 5, 2024. On January 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 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 10, 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 11, 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 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on February 14, 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 Copenhagen based company specialized in the manufacture and sale of furnishings and interior designs.

The Complainant owns a variety of FERM LIVING trademarks including for example:

- Danish Registered Trademark No. VR 2007 00835, registered March 27, 2007;
- Danish Registered Trademark No. VR 2014 00497, registered March 3, 2014;
- International Trademark Registration No. 1391990, registered August 16, 2017, designated for various countries around the world; and
- European Union Trademark Registration No. 16389439, registered September 7, 2017 (Annexes 3 and 4 to the Complaint).

The Complainant further owns the domain name <fermliving.com>, which addresses its main business website where it offers furnishings and interior design items under its trademark and logo for sale (Annex 5 to the Complaint).

The disputed domain name was registered on November 5, 2023 (Annex 1 to the Complaint); at the time of filing of the Complaint, it resolved to a website that displayed the Complainant's trademark as well as product images and names that are identical to those of the Complainant's website (Annex 7 to the Complaint).

Currently, the disputed domain name does not resolve to a website with any content.

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.

Notably, the Complainant contends that the FERM LIVING trademark is distinctive and well known in the field of furnishings and interior design items. The Complainant notes that the disputed domain name contains the FERM LIVING trademark almost in its entirety, simply omitting the first "i" in the word "living". The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. Further, the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the FERM LIVING trademark in any manner.

The Complainant notes that the disputed domain name is actively used for selling the Complainant's branded products through a web shop, available on a website branded with the Complainant's distinctive and well-known trademark and addressed by the disputed domain name.

Hence, the Complainant contends, that based on the totality of these factors, it is clear that the Respondent is acting in bad faith with the intent to create a likelihood of confusion with the Complainant's mark and legitimate e-commerce website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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 submitted evidence, which incontestably and conclusively establishes rights in the mark FERM LIVING.

In the present case the disputed domain name <fermlving.shop> is confusingly similar to the FERM LIVING mark in which the Complainant has rights since it only omits the first "i" in the word "living".

It has long been established under UDRP decisions that a misspelling of a trademark, here, the mere omission of a letter, does not prevent a finding of confusing similarity under the first element of the Policy because the relevant trademark remains recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.9).

Finally, it has also long been held that generic Top-Level Domains ("TLDs") are generally disregarded when evaluating the confusing similarity between a disputed domain name and a trademark. [WIPO Overview 3.0](#), section 1.11.

Based on the available record, 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.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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, since it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the FERM LIVING trademark in any manner. The Respondent did not reply and hence has not rebutted the Complainant's contentions.

Further, the Complainant focuses on the fact that its trademark is distinctive and well known in the field of furnishings and interior design items; moreover, the trademark FERM LIVING is registered in a variety of jurisdictions around the world and provides suitable evidence of its reputation, adding that it is inconceivable that the Respondent would not have been aware of this when registering the disputed domain name.

Finally, the nature of the disputed domain name, comprising the Complainant's mark in its entirety together with an obvious misspelling of the word "living", indicates an awareness of the Complainant and its mark and there is a risk that Internet users will not notice the subtle misspelling. Therefore, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant as it may mistakenly be seen as effectively impersonating or suggesting some connection to the Complainant that does not exist.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademark FERM LIVING, long before the registration of the disputed domain name. Further, the trademark FERM LIVING is distinctive and is well known in the field of furnishings and interior design items. The Respondent offered for sale the products using the Complainant's model images and product names on its website addressed by the disputed domain name.

It is therefore inconceivable for this Panel that the Respondent has registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive registered trademark almost entirely, together with an obvious and intentional misspelling of the Complainant's FERM LIVING mark.

Finally, the disputed domain name uses the TLD ".shop" which also strongly indicates that the Respondent was aware of the Complainant's online business/shop at the time of registration the disputed domain name.

All of these facts indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant put forward evidence that the disputed domain name resolved to a website which contained the Complainant's registered trademark, and where the Respondent offered the products for sale using the product images and names from the Complainant's website.

In doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith registration and use of the disputed domain name.

Based on the available record, 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 <fermlving.shop> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: February 28, 2024