

ADMINISTRATIVE PANEL DECISION

Ferm Living ApS v. SongXiangrong
Case No. D2023-4554

1. The Parties

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

The Respondent is SongXiangrong, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 2023, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 6, 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 November 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on December 26, 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, which has specialized in the manufacture and sale of furnishings, works of art, decorative accessories and interior designs since its foundation in 2006.

The Complainant owns the trademarks FERM LIVING and FERM LIVING (figurative), which are registered in more than 40 countries throughout the world with more than 48 registrations, including the following:

- Danish Trademark Registrations no. VR 2007 00835, registered on March 27, 2007, and no. VR 2014 00497, registered on March 3, 2014.
- WIPO Trademark Registrations no. 1391990, registered on August 16, 2027, and no. 1228352, registered on March 26, 2014.
- European Union Trademark Registrations no. 16389439, registered on September 17, 2017, and no. 1228352, registered on March 26, 2014.

The disputed domain name was registered on September 26, 2023, and resolves to a website impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar with the Complainant's trademark FERM LIVING as the disputed domain name incorporates the entirety of the Complainant's trademark and trade name FERM LIVING in combination with the term "alle" and the generic Top-Level-Domain ("gTLD") ".com".

The Complainant is not in any way affiliated with the Respondent or the disputed domain name nor have they permitted the use of their trademark FERM LIVING in any way.

The disputed domain name is currently used for a website imitating the Complainant's website, trademark, designs, product names and environmental pictures with the intent for commercial gain to misleadingly divert customers or to tarnish the Complainant's FERM LIVING trademarks.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademark FERM LIVING, on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview on WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

The mere addition of the term “alle” with the meaning of “all or everything” in some languages, does not prevent a finding of confusing similarity with the Complainant’s marks. As noted in [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

Similarly, the gTLD “.com”, is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark (see also [WIPO Overview 3.0](#), section 1.11.1).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP 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 disputed domain name.

The Panel will now examine the Complainant’s arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s trademarks in a domain name or in any other manner. The Complainant also contends that the Respondent is not known under the disputed domain name. Furthermore, the disputed domain name directs to a website whereby promotes products without the Complainant’s approval or authorization. The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademarks (see [WIPO Overview 3.0](#), section 2.5.1). The Respondent used the disputed domain name in an unlawful attempt to fraudulently impersonate the Complainant. The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise

transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the FERM LIVING trademark at the time the disputed domain name was registered. The Panel finds bad faith based on the widely evidenced recognition of the Complainant's marks and the use made of the disputed domain name. The Respondent's website offers similar products to those offered by the Complainant, and the Respondent's website has a similar look-and-feel as the Complainant's website, even reproducing the Complainant's logo, designs, product names and environmental pictures. It should be bear in mind that the fraudulent manner in which the disputed domain name was used indicates that the Respondent registered the disputed domain name with the intention to impersonate the Complainant, which makes it impossible that the Respondent was not aware of the Complainant's rights at the time of registration of the disputed domain name.

The Complainant points out that the Respondent is hiding its identity behind a WhoIs privacy wall. It is well established that this, too, can be a further indicator of bad faith in certain circumstances.

Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the inherently misleading disputed domain name.

Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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 disputed domain name <allefermliving.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: January 6, 2024