

ADMINISTRATIVE PANEL DECISION

Ferm Living ApS v. Laura Adams, Adams Laura
Case No. D2024-0282

1. The Parties

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

Respondent is Laura Adams, Adams Laura, United States of America.

2. The Domain Name and Registrar

The disputed domain name is <fermlivings.shop> which is registered with Web Commerce Communication Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 23, 2024. On January 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 those in the Complaint (Redacted for privacy). The Center sent an email communication to Complainant on January 24, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 25, 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 Respondent of the Complaint, and the proceedings commenced on January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 20, 2024.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on February 22, 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

Complainant, founded in 2006, is a Danish company engaged in the manufacture and sale of furnishings and interior designs, including furniture, works of art and other decorative accessories.

Complainant has rights over the FERM LIVING mark for which it holds, among others, Denmark trademark registration No. VR 2007 00835 in classes 16, 20, and 35, registered on March 27, 2007; and International trademark registration No. 1391990 in classes 8, 11, 16, 20, 21, 24, 25, 27, 28, and 35, registered on August 16, 2017.

Complainant also has rights over the FERM LIVING and design mark for which it holds, among others, Denmark trademark registration No. VR 2014 00497 in classes 11, 16, 20, 21, 24, 27, 28, and 35, registered on March 3, 2014; and International trademark registration No. 1228352 in classes 11, 16, 20, 21, 24, 27, 28, and 35, registered on March 26, 2014.

The disputed domain name was registered on December 3, 2023. Before the Complaint was filed, the website linked to the disputed domain name purportedly offered for sale furniture and home accessories at discounted prices, using the brand name Ferm Living and/or Complainant's product names.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy and requests that the disputed domain name be transferred to Complainant. Complainant's assertions may be summarized as follows.

The products produced and distributed by Complainant, which are designed by in-house designers, are sold in more than 75 countries worldwide. Complainant has its FERM LIVING and FERM LIVING and design marks registered in more than 40 countries throughout the world. Complainant also owns and maintains a website linked to the domain name <fermliving.com> under which Complainant promotes and sells its products. A Google search for "ferm living" shows 15,000,000 hits, many of them referring to Complainant.

The disputed domain name is confusingly similar to Complainant's FERM LIVING mark since it incorporates the entirety of said mark in combination with the letter "s". The addition of said letter "s" is not sufficient to overcome the confusing similarity with respect to Complainant's FERM LIVING mark which remains the dominant and only distinctive element in the disputed domain name.

Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that Respondent owns any marks that reflect the disputed domain name, and nothing suggests that Respondent is commonly known by the disputed domain name. Complainant is not in any way affiliated with Respondent or the disputed domain name and has not licensed or otherwise permitted Respondent to use its marks or to apply for any domain name incorporating its marks.

Respondent is making use of the disputed domain name with the intent of commercial gain to misleadingly divert customers or to tarnish Complainant's marks. On the website under the disputed domain name a large number of interior products and furniture are being marketed and sold, conveying the impression that they are original products from Complainant. Respondent has been using Complainant's designs, product

names and environmental pictures on the website linked to the disputed domain name, imitating Complainant's website, in order to attract customers and make the disputed domain name's website look legitimate.

Respondent's use of the disputed domain name may mislead existing customers and potential new customers into believing that Respondent is acting as an authorized dealer of the FERM LIVING products. The disputed domain name enhances the risk of confusion with Complainant's marks and domain name <fermliving.com>. The relevant public could be induced to assume that they are able to buy original FERM LIVING products on the website linked to the disputed domain name, and to believe that said website is owned by or related to Complainant. Such association by the public will be detrimental to Complainant and Complainant's marks.

The disputed domain name has been registered and is being used in bad faith. Complainant's marks have been established several years prior to the registration of the disputed domain name. In light of the reputation of Complainant's marks, and Complainant's worldwide business, Respondent was more likely than not aware of Complainant's marks. The registration of domain names that are confusingly similar to a registered mark by a person with no connection to that mark amounts to opportunistic bad faith.

It is apparent from the composition of the disputed domain name that Respondent must have known of Complainant's marks and business. Respondent could not have chosen or subsequently used the term "fermliving" in combination with the letter "s" for any reason other than to trade-off the goodwill and reputation of Complainant's marks or otherwise create a false association, sponsorship, or endorsement with Complainant.

The disputed domain name was registered with a deliberate intent to create an impression of an association with Complainant. Given Respondent's lack of rights or legitimate interests in the disputed domain name and the latter's confusing similarity with Complainant's marks, any use of the disputed domain name for the marketing and sale of either counterfeit or identical products will carry a risk of implied affiliation with Complainant and be a use in bad faith.

Considering the brand awareness of FERM LIVING worldwide, an Internet user would most probably assume a connection with or endorsement from Complainant and its business when seeking information on the website linked to the disputed domain name, in particular when Complainant's mark, product names, and designs are used without any permission on said website. By using the disputed domain name, Respondent has intentionally attempted to attract for commercial gain Internet users to its website, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation or endorsement of such website.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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.

A. Identical or Confusingly Similar

The Panel finds 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 entirety of the FERM LIVING mark is reproduced within the disputed domain name, albeit followed by a letter “s”. The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to said mark for the purposes of the Policy ([WIPO Overview 3.0](#), sections 1.7 and 1.9).

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 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).

This Panel considers that the nature of the disputed domain name, comprising Complainant’s mark followed by a letter “s”, can be considered as a misspelling of Complainant’s mark and that there is a risk that Internet users will not notice the subtle misspelling. The Panel therefore finds that the nature of the disputed domain name carries a risk of implied affiliation as it may mistakenly be seen as effectively impersonating or suggesting some connection to Complainant. The evidence in the file shows that Respondent commercially operated the website linked to the disputed domain name to advertise the sale of furniture and home furnishings generally, showing Complainant’s FERM LIVING mark, and without showing the identity of the operator thereof, and there appears to be no disclaimer as regards Complainant and its marks, and the lack of relationship between Complainant and Respondent thus misleading Internet users into believing that such website may be somehow associated with Complainant. In the file there is no justification for Respondent to use Complainant’s mark in the disputed domain name and its website, and to commercially benefit therefrom. All that demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Based on the available record, 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.

Having reviewed the case file, the Panel finds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. The disputed domain name incorporates Complainant's prior registered FERM LIVING mark in its entirety, albeit with just a minor typographical error variation (the addition of a letter "s" at its end), practice commonly known as typosquatting and which has been deemed as a strong indicative of bad faith under a number of UDRP cases.¹ Respondent took advantage of the implied affiliation of the disputed domain name that may be mistakenly seen by Internet users and used it to feature the same and similar kind of products marketed by Complainant using Complainant's trademark and/or product names, thus diverting Internet traffic looking for Complainant in order to commercially benefit therefrom. By using in such way the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website and the products offered therein, which is a showing of bad faith (see paragraph 4(b)(iv) of the Policy).

Based on the available record, the Panel finds that 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 <fermlivings.shop> be transferred to Complainant.

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: March 7, 2024

¹ See *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#): "Typosquatting is virtually *per se* registration and use in bad faith". See also *Canva Pty Ltd v. Lucas Pinheiro and Jeivison Luiz Carvalho de Souza*, WIPO Case No. [D2022-0853](#): "[...] given the composition of the disputed domain names the Panel finds that the Respondent obviously knew of the Complainant and deliberately registered the disputed domain names, especially because the disputed domain names resolve to a website offering the same services as the Complainant[.]"