

## **ADMINISTRATIVE PANEL DECISION**

Ferm Living ApS v. Pcsn Unxqd

Case No. D2023-2137

### **1. The Parties**

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

The Respondent is Pcsn Unxqd, Hong Kong, China.

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

The disputed domain name <soldesfermliving.com> 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 May 15, 2023. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 May 23, 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 June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 30, 2023.

The Center appointed Erica Aoki as the sole panelist in this matter on July 18, 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 renowned Danish company based in Copenhagen, which has specialized in the manufacture and sale of furnishings and interior designs since its foundation in 2006.

The Complainant owns the trademarks FERM LIVING and FERM LIVING (device mark), which are registered in more than 40 countries throughout the world with more than 48 registrations, including, but not limited to; Danish Trademark Registrations No. VR 2007 00835 FERM LIVING, registered on April 2007, and No. VR 2014 00497 FERM LIVING (device mark), registered on March 12, 2024, International Registration No. 1391990 FERM LIVING, registered on August 16, 2017 (designating *inter alia* European Union (“EU”), China, Republic of Korea, Norway, Japan, India, Switzerland, Australia, New Zealand, Türkiye and United States of America (“United States”)), International Registration No. 1228352 FERM LIVING (device mark), registered on March 26, 2014 (designating *inter alia* EU, China, Republic of Korea, Norway, Japan, India, Switzerland, Australia, New Zealand, Türkiye, Russian Federation, Singapore, Viet Nam, United Kingdom and United States), European Union Trademark (“EUTM”) Registration No. 016389439 FERM LIVING, registered on September 7, 2017, EUTM Registration No. 1228352 FERM LIVING (device mark), registered on April 9, 2015.

The Complainant has also a website promoting their services under the domain name <fermliving.com> registered since February 26, 2007.

The disputed domain name was registered on August 24, 2022 and resolves to a website imitating the Complainant’s website “www.fermliving.com” using the Complainant’s trademark, designs, product names and environmental pictures in order to attract customers and make the website look legitimate. The disputed domain name offers the products at discounted prices.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant has a broad portfolio of high-quality furnishings, including furniture, works of art and other decorative accessories. The products produced and distributed by the Complainant are sold in more than 75 countries worldwide.

The Complainant contends that 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 “soldes” and the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the addition of the suffix “soldes” does not impact the overall impression of the dominant part of the name FERM LIVING and hence is not sufficient to overcome the confusing similarity with respect to the Complainant’s FERM LIVING trademark which remains the dominant and only distinctive element in the disputed domain name.

Moreover, the Complainant contends that section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) provides that when the relevant trademark is recognizable within the disputed domain name – as it occurs in this case – the addition of other terms would not prevent a finding of confusing similarity under the first element, please see *e.g. Wal-Mart Stores, Inc v. Richard McLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#). Considering the brand awareness of the trademark FERM LIVING worldwide, an Internet user would most probably assume a connection with or endorsement from the Complainant and its business when seeking information on a website with the disputed domain name, in particular when the Complainant’s logo and trademark are used without any permission on the Respondent’s website.

The Complainant further contends that the disputed domain name enhances the risk of confusion between the Complainant's domain name and trademarks, since Internet users might be led to believe that the Respondent's website is owned by or related to the Complainant and that buying products from the website is equal to buying products from the Complainant. Such association by the Internet users between the website and the Complainant will undoubtedly be detrimental to the Complainant and the Complainant's FERM LIVING trademark especially since the Respondent is also using the Complainant's environmental pictures, products names and FERM LIVING device mark without having obtained consent.

Furthermore, the Complainant contends that the Respondent's use of gTLD ".com" must according to well-accepted principal be excluded from consideration because such gTLD has no legal significance and may be disregarded according to [WIPO Overview 3.0](#), section 1.11. The gTLD ".com" is usually disregarded under the confusing similarity test as it is a technical requirement of registration. Subsequently, using the Top-Level ".com" is in itself insufficient to avoid a likelihood of confusion between the disputed domain name and the FERM LIVING trademark, as there is a clear phonetic, visual, and conceptual similarity between the domain name and the Complainant's trademarks.

The Complainant concludes that the Respondent has not used or demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and is not making a legitimate noncommercial or fair use of the disputed domain name for purposes of paragraph 4(c)(iii) of the Policy. The Respondent has not been authorized to use the Complainant's trademarks, and there is no indication that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

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

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

Based on the facts presented by the Complainant, this Panel finds that the Complainant has established its rights in FERM LIVING trademarks through registration and use. The Panel finds that the disputed domain name is confusing similar to FERM LIVING trademark, as the disputed domain name includes the Complainant's mark in full and that the gTLD in the disputed domain name should be disregarded for the confusing similarity test.

The disputed domain name reproduces the FERM LIVING trademark of in its entirety along with the word "soldes" (sales in English). The addition of the suffix "soldes" does not prevent a finding of confusing similarity with respect to the Complainant's FERM LIVING trademark, which remains recognizable in the disputed domain name.

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

The Panel finds the following on record in this proceeding under the Policy:

Paragraph 4(c) of the Policy indicates that a registrant may have a right or legitimate interest in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Respondent is in no way connected with the Complainant and has no authorization to use any of the Complainant's trademarks.

There is no evidence on record that the Respondent is or was commonly known by the disputed domain name as an individual, business, or other organization.

There is no evidence on record that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Panel finds that because the disputed domain name incorporates the Complainant's FERM LIVING trademark with the term "soldes" (sales in English), any use of such domain name by the Respondent carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, under the Policy, paragraph 4(a)(ii).

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

The disputed domain name is confusingly similar to the Complainant's trademarks FERM LIVING and the disputed domain name reproduces in its entirety the Complainant's trademark.

Moreover, the Respondent was aware of the Complainant's trademarks FERM LIVING at the time the Respondent registered the disputed domain name since the disputed domain name resolves to an online website using the Complainant's trademark, designs, product names and environmental pictures in order to attract customers and make the website look legitimate.

The disputed domain name has been registered many years after the Complainant has established a strong reputation and goodwill in its trademarks.

The Respondent in no doubt knew of the Complainant's trademarks at the time of registration of the disputed domain name, and deliberately sought to use their goodwill to attract Internet users seeking the Complainant's product.

The Respondent has no rights or legitimate interests other than as a deliberate attempt to profit unfairly from confusion with the Complainant's mark, (*Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

The disputed domain name was registered with a deliberate intent to create an impression of an association with the Complainant, consequently, the disputed domain name was registered and is using the in bad faith.

## **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 <soldesfermliving.com> be transferred to the Complainant.

**Erica Aoki**

Sole Panelist

Date: August 1, 2023