

Decision for dispute CAC-UDRP-105701

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| Case number | CAC-UDRP-105701 |
| Time of filing | 2023-08-15 10:20:07 |
| Domain names | fabercustomercafe.com |

Case administrator

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| Name | Olga Dvořáková (Case admin) |
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Complainant

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| Organization | Faber S.P.A |
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Complainant representative

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| Organization | BRANDIT GmbH |
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Respondent

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| Organization | Global Solutions |
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous registrations for the FABER trademark, among which, the following:

- FABER, International registration No. 510203, of 13 February 1987, for goods in class 11;
- FABER, International registration No. 974422, of 21 July 2008, for goods in class 11;
- FABER, International registration No. 1343497, of 30 November 2016, for goods in classes 11 and 21;
- FABER, European Union registration No. 9180712, registered on 12 February 2011, for goods in classes 6, 11, 21 and 37;
- FABER, Indian trademark registration No. 723816, registered on 17 June 1996, for goods in class 11;
- FABER, Indian trademark registration No. 1684284, registered on 6 May 2008, for goods in classes 11, 20 and 21.

The Complainant is also the owner of a large number of domain names containing the trademark FABER, such as <faberspa.com>, registered on the 14th of December 1999, <faberspa.co.in>, registered on the 12th of May 2006, <faberindia.in>, registered on the 18th of September 2007, etc.

FACTUAL BACKGROUND

The Complainant is an Italian manufacturer of high quality kitchen hood. The Complainant is part of the Franke Group, a global group of companies based in Switzerland and founded in 1911. The Complainant was first established in 1955 and is now present in 8 countries

and on 3 continents with several plants and commercial offices. In India, the Complainant has a subsidiary, incorporated in 1997 and operates online through the domain name <faberindia.com>. Faber has also a strong presence on the most important social networks and gained several awards for its innovative products.

The disputed domain name was registered on 21 January 2022 and resolves to a "coming soon" webpage displaying the wording "Faber Service Center" twice, and a telephone number. The webpage also shows a background of a kitchen and a hood. On 31 January 2023, the Complainant sent a cease and desist letter to the Respondent listed in the Whois of the disputed domain name, without receiving any answer.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant maintains that the disputed domain name is confusingly similar to the FABER trademark as it incorporates this trademark entirely and the addition of the terms "customer" and "care" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered many years after the first registration of the FABER mark. The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form. Moreover, there is no evidence of the fact that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The structure of the disputed domain name reveals that the Respondent's initial intention in registering the disputed domain name was to refer to the Complainant, its trademark and business activities. The disputed domain name incorporates the Complainant's FABER mark with the addition of the terms "customer" and "care", which directly relate to the Complainant's business and especially to its after-sale customer services. The disputed domain name resolves to a "coming soon" webpage that displays the FABER mark as well as colors - in dominant white, grey and green tones - highly similar to the ones used on the Complainant's official website at "www.faberspa.com". The disputed domain name is therefore likely to create the false impression that the Respondent is an authorized service center for the Complainant's products without express authority of the Complainant. The background of the page, as described above, also refers to the Complainant's business. This use of the disputed domain name cannot be considered a bona fide or a legitimate noncommercial or fair use as it suggests affiliation with the Complainant. The relevant website does not contain any information on whom is operating the website and offering the repair services advertised on the same. However, the webpage contains several features that are a clear reference to the Complainant's business. The webpage also contains a telephone number, inviting the visitors to call if an after-sale service is needed. The Respondent is therefore using the disputed domain name to divert Internet users looking for the Complainant to its own webpage for the Respondent's benefit.

In relation to bad faith, the Complainant observes that it is unconceivable that the Respondent was unaware of the existence of the Complainant when it registered the disputed domain name, considering that the trademark FABER is widely known, and that the Complainant owns an Indian subsidiary operating in this country, which is the same country where the Respondent is located. Moreover, a simple online search on a popular search engine using the keyword "faber" would have revealed the Complainant and its business. The disputed domain itself, which contains the words "customer" and "care" next to the Complainant's trademark, is a further indication of the fact that the Respondent knew the Complainant and its trademark when it registered the disputed domain name. Indeed, these words are strictly connected to the Complainant's activity, which includes post-sale customer services.

The contents of the webpage associated with the disputed domain name is a further evidence of the fact that the Respondent is using the disputed domain name to capture Internet traffic from Internet users who are looking for the Complainant's products and services. The Respondent calculated to confuse Internet to attract them for commercial gain to its website.

Moreover, the Respondent never replied to the cease and desist letter sent by the Complainant and concealed its identity behind a privacy service provider. Both these circumstances are additional evidence of bad faith.

RESPONDENT:

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

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Confusing similarity

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademark FABER as it includes it entirely followed by the terms "customer" and "care", which are related to the Complainant's activity. Previous UDRP Panels have generally found that where the relevant trademark is recognizable within a disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. This general principle also applies in this case, where the Complainant's trademark is clearly recognizable within the disputed domain name despite the addition of the words "customer" and "care".

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

2. No rights or legitimate interests

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant states that it has no relation with the Respondent and that it never authorised the Respondent to register and use the disputed domain name. Moreover, there is no evidence in the file that the Respondent is known by the name "fabercustomer care" or that the Respondent owns registered trademark rights over this name. The disputed domain name contains the trademark FABER and two words "customer" and "care" that refer to the post-sale Complainant's activity. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The Respondent is using the disputed domain name to lead to a webpage reproducing the trademark FABER as part of the wording "Faber Service Center" and a picture of a kitchen and a hood as background. It is clear from these circumstances that the Respondent is impersonating the Complainant or at least suggesting, to the Complainant's potential customers, sponsorship or endorsement by the trademark owner of the Respondent's webpage and promoted activity. Therefore, the use that the Respondent is making of the disputed domain name cannot amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel therefore finds that the Complainant has proved that the Respondent lacks rights or legitimate interests in the disputed domain name. It is now up to the Respondent to provide convincing evidence of the fact that it owns rights or legitimate interests in the disputed domain name. However, the Respondent chose to not file a Response and therefore lost the opportunity to defend its rights.

In light of this, the Panel is satisfied that also the second condition of the Policy is met.

3. Bad Faith

Under Paragraph 4(a)(iii) to succeed in a UDRP proceeding, the Complainant must prove that the domain name has been registered and is being used in bad faith.

With respect to use in bad faith, the Complainant has stressed that the FABER mark enjoys reputation and that the Respondent could not ignore its existence when it registered the disputed domain name. The Panel agrees that the Respondent knew the FABER mark and the Complainant at the time of the registration of the disputed domain name. In particular, the Panel notes that the use of the FABER mark is widespread and longstanding and that the Complainant is also the owner of a subsidiary in India, the same country of the Respondent, since 1997. The Complainant is using a specific domain name to lead to a website aimed at the Indian market. Moreover, the FABER mark is distinctive in its field of business and only associated with the Complainant. Last but not least, the disputed domain name consists of the trademark FABER in association with two words that refer to the Complainant's post-sale activity and the related webpage depicts a picture of a kitchen and a hood, that is exactly the Complainant's activity. Accordingly, in the Panel's view, the knowledge by the Respondent of the Complainant's trademark at the time of the registration of the disputed domain name is unquestionable. The registration of a domain name containing a third party's trademark, being aware of such trademark and

without rights or legitimate interests in the domain name, amounts to registration in bad faith.

As far as use in bad faith is concerned, the Panel notes that the fact that the disputed domain name leads to a webpage displaying the wording "Faber Service Center" on a background displaying the same goods that the Complainant's manufactures, without any further reference as to whom is effectively providing these services, along with the indication of a phone number, is clear evidence of use in bad faith. The Respondent, is deliberately attempting to deceive Internet users who are looking for the Complainant's after-sales services, redirecting them to its webpage and inducing them to call the number displayed to offer its after-sales services, making them believe that it is a specialized service center of the Complainant. Such use of the disputed domain name amounts to use in bad faith.

In addition to the above, the Panel notes that the Respondent failed to reply to the Complainant's cease and desist letter and concealed its identity behind a privacy protection service provider. Both these circumstances are additional evidence of bad faith.

The Panel is therefore satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **fabercustomercafe.com** : Transferred

PANELLISTS

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| Name | Angelica Lodigiani |
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DATE OF PANEL DECISION 2023-09-29

Publish the Decision