

## **ADMINISTRATIVE PANEL DECISION**

Vorwerk International AG v. Privacy service provided by Withheld for Privacy ehf / zabari shahaf

Case No. D2022-1400

### **1. The Parties**

The Complainant is Vorwerk International AG, Switzerland, represented by Moeller IP, Argentina.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / zabari shahaf, United States of America (“United States”).

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

The disputed domain name <thermomix.store> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2022 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 5, 2022.

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 May 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on June 20, 2022. 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 business division of Vorwerk, an international corporate group that among others manufacturers the multifunctional kitchen appliance called Thermomix. The Complainant has a 130-year history. It trades in 70 countries, has approximately 12,000 employees worldwide and works with approximately 578,000 independent sales partners. In 2020, the Complainant generated EUR 1,584 million in sales and an average of 59,900 self-employed sales advisors and 5,900 employees work for Thermomix.

The Complainant holds trademark registrations for the word mark THERMOMIX (the "Trademark") in various jurisdictions. In the United States the Complainant holds a registration for the THERMOMIX mark with a registration date of June 30, 2015 (registration No. 4762314), registered for various goods and services in Nice classes 7, 9, 11, 16, 18, 21, 24, 25, 28, 35, 37, and 41.

The Complainant also owns over 400 domain names containing the Trademark.

The Domain Name was registered on March 7, 2022.

The Domain Name resolves to a website (the "Respondent's Website") that is very similar to the Complainant's website and purported to offer Thermomix products for a price well below that of the original product of the Complainant.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied.

The disputed domain name is confusingly similar to the Complainant's registered Trademark, in light of the fact that it wholly incorporates the Trademark. The only difference is in the addition of a generic Top-Level Domain ("gTLD") ".store" that does not distinguish the Complainant's mark.

The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain name. The Respondent has no known connection or affiliation with the Complainant and has received no authorization of any sort from the Complainant to use the Trademark or include it in any domain name.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark, is itself evidence of bad faith registration and use. The Complainant further points out that the disputed domain name diverts to a website that mimics the website of the Complainant and has a similar look and feel. Confused Internet users will believe that it is an official website of the Complainant. According to the Complainant, the website mentioned many times THERMOMIX as a registered trademark (by using <sup>TM</sup> or ®), and reproduces product images belonging to the Complainant. According to the Complainant, this demonstrates that the Respondent is free-riding on the Complainant's reputation and goodwill to mislead unsuspecting Internet users to the disputed domain name's webpage and creating a false impression that the Respondent is affiliated with and an authorized distributor or reseller of the Complainant. The Complainant points out that the use by the Respondent of the disputed domain name that is confusingly similar to the Trademark in order to attract Internet users looking for genuine products of the Complainant's company and to offer them unauthorized copies instead is a strategy that lacks *bona fides* and does not give rise to rights or legitimate interests.

According to the Complainant, the Trademark was registered well before the date of registration of the disputed domain name by the Respondent. The Respondent selected and used the disputed domain name because it was identical to the THERMOMIX trademark, thus carrying an implicit risk of confusion,

intentionally disrupting the Complainant's business by diverting and misleading consumers looking for genuine products of the Complainant's company for profit and harming its reputation through the sale of counterfeit products or unauthorized imitations of the Complainant's products.

## **B. Respondent**

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

## **6. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (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 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 Complainant has provided details of its trademark registrations for THERMOMIX, including the registration in respect of which full details are set out above, and has thereby established its rights in this mark.

The disputed domain name incorporates the Trademark in its entirety, adding the gTLD ".store", which is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity.

Accordingly, this Panel finds that the disputed domain name is identical to the Trademark, and the first element of the Policy under paragraph 4(a) has been satisfied.

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

This, the second element of the Policy paragraph 4(a)(ii), essentially calls for a complainant to prove a negative, which is far from easy where the relevant information as to the respondent's rights or legitimate interests is often primarily within the knowledge of the respondent. The matter is addressed in section 2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows:

"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."

This is not a case where the respondent has rebutted the complainant's *prima facie* case. The facts speak for themselves:

- the Respondent's Website is so similar to the Complainant's website that consumers will think they are visiting the website of the Complainant or an affiliated company;
- alleged "suspicious products" as if they were legitimate Thermomix products, for a price well below that of the original product, using photos and videos taken from the official website of the Complainant, are offered on the Respondents Website.

As found by the panel in *Philipp Plein v. Privacy Protection Service INC d/b/a PrivacyProtect.org / Norma Brandon, cheapphilipplein*, WIPO Case No. [D2015-1050](#): "The Respondent's use of a domain name that is confusingly similar to the Complainant's trade marks in order to attract Internet users looking for genuine products of the Complainant's company and to offer them unauthorized copies instead is a 'bait and switch' strategy that lacks *bona fides* and does not give rise to rights or a legitimate interests under the Policy." See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Having regard to the above considerations, the Panel finds that the disputed domain name is not being used in connection with a *bona fide* offering of goods and services, and the second element of the Policy under paragraph 4(a) has been satisfied.

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

Given that the Respondent's Website is essentially a clone of the Complainant's commercial website selling what appears to be counterfeit products and the discussion above, it is clear that the Respondent had the Complainant in mind when registering the disputed domain name. Moreover, the Respondent has intentionally tried to attract, for commercial gain, Internet users to the Respondents website, by creating this likelihood of confusion with the Complainant's Trademark.

Therefore, the Panel finds that 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.

### **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 <thermomix.store> be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: June 28, 2022