

## **ADMINISTRATIVE PANEL'S DECISION**

VORWERK International AG v. Host Master, 1337 Services LLC  
Case No. D2022-1591

### **1. The Parties**

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

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

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

The disputed domain name <koop-thermomix.com> is registered with Tucows Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 2, 2022. On May 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3, 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 4, 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 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 27, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 3, 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 company with its registered seat in Switzerland. Its roots date back to the 19<sup>th</sup> century. The Complainant is internationally active in the field of marketing household appliances. In 1970, the Complainant developed a kitchen appliance that could mix and cook. Since then, this product is offered under the brand name "Thermomix".

The Complainant owns a large number of word and figurative THERMOMIX trademark registrations around the world (Annex A to the Complaint). According to the Complaint, the Complainant is, among many others, the registered owner of the following THERMOMIX trademark registrations:

- Swiss Trademark Registration No. 647702 (registered on August 26, 2013);
- International Trademark Registration No. 1188472 (registered on September 6, 2013);

both providing trademark protection for goods and services in International Classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41, particularly for electric cooking apparatuses.

The Complainant also owns and operates approximately 400 domain names comprising the THERMOMIX trademark (Annex B to the Complaint).

The disputed domain name was registered on April 6, 2022.

The screenshots, as provided in the Complaint, show that the disputed domain name resolved to a website in the Dutch language, which was used for allegedly offering the Complainant's cooking apparatus and provided the same look and feel of the Complainant's official website. On the respective website linked to the disputed domain name, the Complainant's THERMOMIX trademark and its official product images were used without any visible disclaimer describing the (lack of) relationship between the Parties.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant is of the opinion that the disputed domain name is confusingly similar to its THERMOMIX trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It is rather argued that the disputed domain name falsely suggests that there is some official or authorized link between the Complainant and the Respondent.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant believes that the Respondent must have been well aware of the Complainant's THERMOMIX trademark when registering the disputed domain name, particularly as the Respondent uses the Complainant's THERMOMIX trademark on the website linked to the disputed domain name and its genuine product images without authorization and any disclosure of the lack of relationship between the Complainant and the Respondent.

##### **B. Respondent**

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

## 6. Discussion and Findings

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademark 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.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark THERMOMIX by virtue of a large number of trademark registrations worldwide.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's THERMOMIX trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The mere addition of the term "koop", which is Dutch language and means "buy" in the English language, does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's THERMOMIX trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed

domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal Response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

In this regard, the Panel is also convinced that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Oki Data* are apparently not fulfilled in the present case. The Panel particularly notes that the website, which was linked to the disputed domain name did not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the website is operated by the Complainant. At least, the look and feel of the website linked to the disputed domain name creates the false impression that it is an official and authorized reseller/distributor for the Complainant's products in the Netherlands. This assessment is further supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In the Panel's view, all this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademark in mind when registering the disputed domain name.

In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its electric cooking apparatus. After having reviewed the Complainant's screenshots of the website linked to the disputed domain name, the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website. The Panel particularly notes that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the use of official product images of the Complainant and the Complainant's THERMOMIX trademark on the website linked to the disputed domain name as well as the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to misrepresent itself as the Complainant and to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

Also, the Panel believes that the Respondent has deliberately opted for hiding its true identity in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.

All in all, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, 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 <koop-thermomix.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: June 17, 2022