

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. ayoub lagnadi, Lagnadi LTD
Case No. D2022-1592

1. The Parties

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

The Respondent is ayoub lagnadi, Lagnadi LTD, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <thermomixer.shop> is registered with NameCheap, 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 the same date, 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 June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 5, 2022.

On July 12, 2022 the Center received a communication from the Respondent, which did not include any substantive response but simply asked what the problem with the disputed domain name was.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on July 11, 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 manufactures the multifunctional kitchen appliance called Thermomix. The Complainant has a 130-year history with direct selling operations in 70 countries. It 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 in various jurisdictions, such as International Trademark Registration No. 1188472 (registered on September 6, 2013) designating several countries and protected amongst others for electric cooking utensils and electric cooking apparatus in class 11.

The disputed domain name was registered on April 12, 2022.

The Complainant has provided evidence demonstrating that at some point the disputed domain name resolved to a website that was very similar to the Complainant's website. It made extensive use of the THERMOMIX mark (including the TM and ® symbols) and used photos and videos taken from the Complainant's official website without any authorization. In addition, that website purported to offer Thermomix products for a price well below that of the Complainant's original product.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name is confusingly similar to the Complainant's registered trademarks since it fully incorporates the trademark THERMOMIX. The only difference is in the addition of the Top-Level Domain ("TLD") ".shop" that does not distinguish the Complainant's mark.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant contends that the Respondent does not own any trademark registration that gives him legitimate interest in the disputed domain name. Furthermore, 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 THERMOMIX trademark or include it in any domain name.

Thirdly, the Respondent's registration and use of the disputed domain name constitutes – in the Complainant's view – bad faith. According to the Complainant, the trademark THERMOMIX which is well known worldwide was registered well before the date of registration of the disputed domain name. Furthermore, the Respondent selected the disputed domain name precisely for undue profit as it was identical to the THERMOMIX mark, with the intention to sell suspicious products bearing THERMOMIX trademark and by reproducing copyrighted content without authorization. This causes an implicit risk of confusion by association, the Respondent was intentionally trying to attract Internet users to its website for profit, by creating a likelihood of confusion with the Complainant's mark. Finally, the Respondent was aware of the THERMOMIX mark which indicates that its choice was deliberate.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this 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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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 Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the owner of several trademark registrations consisting of the verbal element THERMOMIX, e.g., International Trademark Registration No. 1188472 (registered on September 6, 2013) designating several countries and protected amongst others for electric cooking utensils and electric cooking apparatus in class 11.

The Panel notes that the Complainant's registered trademark THERMOMIX is fully included in the disputed domain name. The letters "er" are added at the end of the THERMOMIX trademark. It is the view of this Panel that the combination of the trademark THERMOMIX with the letters "er" placed after the mark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. In fact, in accordance with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element. In the case at hand, the addition of the letters "er" to the trademark does not prevent a finding of confusing similarity.

Adding the TLD ".shop", which is a technical requirement, is generally disregarded for the purpose of the analysis of confusing similarity.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in a disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, it results from the Complainant's uncontested evidence that the disputed domain name resolved to a website that was very similar to the Complainant's website, made extensive use of the THERMOMIX mark and used photos and videos taken from the Complainant's official website without any authorization. In addition, that website purported to offer Thermomix products for a price well below that of the Complainant's original product. In this Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use rather capitalizes on the reputation and goodwill of the Complainant's trademarks and is therefore likely to mislead Internet users. In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the THERMOMIX trademarks for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant's original website(s) under the disputed domain name which entirely incorporates the trademark THERMOMIX. Noting the absence of any disclaimer, the disputed domain name's content exacerbates the confusion caused by the incorporation of the Complainant's trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's use of the disputed domain name to host an impersonating webstore excludes any *bona fide* offering, noncommercial, or fair use of the disputed domain name from the outset.

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production shifts to the Respondent to come forward with relevant and concrete evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances that the Panel finds applicable to the present dispute is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolved to a website that is very similar to the Complainant's website, made extensive use of the THERMOMIX mark (including the TM and ® symbols) and used photos and videos taken from the Complainant's official website. In addition, that website purported to offer Thermomix products for a price well below that of the Complainant's original product. However, the Complainant has not given any authorisation for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademarks THERMOMIX entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see e.g., *Charlotte Tilbury TM Limited v. Domains By Proxy, LLC / Qiangdong Liu, 365rw.com.ltd*, WIPO Case No. [D2020-0408](#); *KOC Holding A.S. v. VistaPrint Technologies Ltd*, WIPO Case No. [D2015-1910](#); *The Chancellor, Masters and Scholars of the University of Oxford v. Oxford College for PhD Studies*, WIPO Case No. [D2015-0812](#); *The Chancellor, Masters and Scholars of the University of Oxford v. Almutasem Alshakhissa*, WIPO Case No. [D2014-2100](#); and *Deutsche Lufthansa AG v. Mustermann Max, Muster AG*, WIPO Case No. [D2015-1320](#)). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

The finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the Respondent's failure to submit a formal response,
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use,
- (iii) the implausibility of any good faith use to which the disputed domain name may be put, and
- (iv) the Respondent appears to have used false address data when registering the disputed domain name.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 <thermomixer.shop> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: July 25, 2022