

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Privacy Services provided by Withheld for Privacy ehf / Alaa Mouttaqui
Case No. D2022-2324

1. The Parties

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

The Respondent is Privacy Services provided by Withheld for Privacy ehf, Iceland / Alaa Mouttaqui, Germany.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 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 June 29, 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 June 29, 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 July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 5, 2022.

The Written Notice of the Notification of Complaint and Commencement of Administrative Proceeding was sent, among others to the address displayed on the webpage of the Respondent's disputed domain name, which in this case seems to correspond to the Complainant's address. By an unsolicited supplemental filing on August 16, 2022, the Complainant asked for consideration of this fact by the Panel.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on August 12, 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 part of the Vorwerk Group. Under the leadership of Vorwerk Group Vorwerk over more than 130 years has grown into a global corporate group. Thermomix is a business division of Vorwerk which is represented with its own subsidiaries in a total of 16 countries in Europe, Asia and North America. In addition, more than 30 distributors are engaged in selling the Thermomix product. Thermomix is a multifunctional cooking appliance.

The Complainant is the owner of numerous trademarks "THERMOMIX" including, without being limited to:

- Uruguayan trademark registration for THERMOMIX, 450860, application date December 12, 2013;
- Indonesian trademark registration for THERMOMIX, D002013007157, application date February 18, 2013;
- Phillipinian trademark registration for THERMOMIX, M11188472, application date July 16, 2020;
- Australian trademark registration for THERMOMIX, 1599284, application date September 9, 2013;
- Singaporean trademark registration for THERMOMIX, T1400085A, application date September 9, 2013.

The Complainant also is the owner of numerous, *i.e.* more than 300, domain names including the term "thermomix". Among Vorwerk's main websites there are <thermomix.com> and <vorwerk.com>.

The disputed domain name was registered on May 12, 2022. The website to which the disputed domain name resolved offered a multifunctional kitchen device which at least looks similar to the original product. It also made use of the THERMOMIX trademark. In addition, to a certain extent it copied wordings and designs from the Complainant's homepage offering the original product. At the time of decision the website resolves to a generic parking page hosted by Namecheap, Inc.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name fully reproduces the trademark THERMOMIX, the only difference being the new generic Top Level Domain ("gTLD") "world". The disputed domain name does not provide any distinctiveness to demonstrate that the disputed domain name constitutes an independent website. There is undeniable phonetic and graphic identity which will lead to errors and confusion in customers regarding business origin. The website of the Respondent also infringes the copyright related to the website offering the original product.

The Respondent does not have rights or legitimate interests regarding the disputed domain name. The Respondent does not have any known connection to the Complainant and did not receive an authorization of any sort from the Complainant to use the trademark THERMOMIX. The Respondent did not receive any authorization to use content from the Complainant that is protected by copyright.

The Respondent has registered and used the disputed domain name in bad faith. The trademarks and domains of the Complainant were registered well before the date of application for the disputed domain name. The Respondent used the disputed domain name to sell “suspicious products” bearing the trademark THERMOMIX and reproduced Vorwerk’s content which is protected by copyright without authorization.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “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”.

It has been a consensus view in previous UDRP decisions that a respondent’s default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (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

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the THERMOMIX trademark with various registrations in countries spread over the world.

The disputed domain name incorporates the THERMOMIX trademark entirely followed by the gTLD “.world”.

[WIPO Overview 3.0](#), section 1.11.1 reads: “The applicable Top Level Domain (‘TLD’) in a domain name (*e.g.*, ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” The gTLD “.world” will therefore be discounted in the Panel’s consideration of confusing similarity. As a consequence the disputed domain name is identical to the trademarks of the Complainant.

The Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant, under the second requirement of paragraph 4(a)(ii) of the Policy, needs to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) reads: “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.”

The Complainant makes its *prima facie* case by demonstrating without contradiction that it has not authorized or granted a license to the Respondent to use its trademark and that the Respondent has not been commonly known by the disputed domain name and there is no evidence in the case file to the contrary.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant, under the third requirement of paragraph 4(a)(iii) of the Policy, needs to establish that the Respondent has been registered and is being used in bad faith.

[WIPO Overview 3.0](#), section 3.2.2 reads: “Knew or should have known: Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen Top-Level Domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The Complainant’s trademark has been used extensively since 2013 approximately. The Complainant’s trademark is widely known in the sector of kitchen appliances. A brief Internet research would have been sufficient to find the Complainant’s trademark being used in websites of Thermomix-companies from various countries.

Additionally, the Respondent simply copied rather large parts of websites of Vorwerk and Thermomix-companies. This is persuasive evidence that the Respondent knew the trademark of the Complainant and deliberately used it to create confusion with customers about the origin of the products offered on the website of the Respondent.

Accordingly, the Panel finds the Complainant has satisfied the requirements 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.world> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: September 1, 2022