

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Philipp Schecker (FLYFIRE84704), FlyFire
Case No. D2022-4215

1. The Parties

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

The Respondent is Philipp Schecker (FLYFIRE84704), FlyFire, Germany.

2. The Domain Name and Registrar

The disputed domain name <thermomix.pro> is registered with Ascio Technologies Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 November 17, 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 November 21, 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 November 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Burgstaller, Peter as the sole panelist in this matter on January 4, 2023. 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 the owner of the mark THERMOMIX; it owns numerous of trademarks for THERMOMIX in various jurisdictions from 1999 onwards, including International trademark THERMOMIX with No. 1188472, registered on September 6, 2013 (Annex A to the Complaint).

The Complainant moreover owns a wide variety of domain names containing the mark THERMOMIX, *inter alia*, <thermomix.com>, <thermomix.biz>, <thermomix.org>, <thermomix.de>, <thermomix.ch> or <thermomix.eu> (Annex B to the Complaint).

The disputed domain name was registered on February 18, 2022.

The disputed domain name currently resolves to a parking site (Annex C to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is in business in the field of high-quality household products for more than 130 years. Today, around 590,000 people are working for the Complainant's Group worldwide including around 578,000 as independent sales partners and around 12,000 as employees

THERMOMIX is a business division of the Complainant; THERMOMIX is moreover the product name of a multi-purpose kitchen appliance of the Complainant which has undergone continuous development since its introduction in 1961 until today.

The Complainant owns numerous registered trademarks and domain names containing the mark THERMOMIX. The Complainant and its trademark THERMOMIX enjoy a worldwide reputation.

The disputed domain name is identical with the Complainant's registered trademarks, its company name and its registered domain name.

The Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. Furthermore, the Respondent cannot claim prior rights or legitimate interest in the disputed domain name as the THERMOMIX trademark precedes the registration of the disputed domain name for years. Finally, the Respondent is not commonly known by the disputed domain name or the name THERMOMIX.

It is implausible that the Respondent was unaware of the Complainant and its trademark THERMOMIX when it registered the disputed domain name. Although the disputed domain name is not used actively, passive holding is within the concept of use in bad faith in the present case especially because of the distinctiveness and reputation of the Complainant's trademark THERMOMIX. Hence, the disputed domain name was registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to 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 submitted evidence, which incontestably and conclusively establishes rights in the trademark THERMOMIX.

The disputed domain name is <thermomix.pro> and is therefore identical to the Complainant's trademark THERMOMIX, since suffixes such as a generic Top-Level Domain ("gTLD") are viewed as a standard registration requirement and as such are disregarded under the first element identity or confusing similarity test (see section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

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

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Respondent failed to submit a Response. Considering all of the evidence in the Complaint (especially with regard to the annexes presented by the Complainant) and the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademarks THERMOMIX in a domain name or in any other manner, lead the Panel to the conclusion that the Complainant has made out an undisputed *prima facie* case so that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

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

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

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and

- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the distinctive registered trademark THERMOMIX, which is registered and used in many jurisdictions around the world long before the registration of the disputed domain name. Moreover, the Complainant registered and is using various domain names containing THERMOMIX e.g. <thermomix.com>, <thermomix.biz>, <thermomix.org>, <thermomix.de>, <thermomix.ch> or <thermomix.eu> and has a strong internet presence with its THERMOMIX mark.

It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark THERMOMIX in its entirety.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Although there is no evidence that the disputed domain name is being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel also concludes that the present passive holding of the disputed domain name, constitutes bad faith use, putting emphasis on the following:

- the Complainant's trademark THERMOMIX is distinctive and in use globally with a strong internet presence;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under 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.pro> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: January 18, 2023