

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Michael Lishuai
Case No. D2022-4250

1. The Parties

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

The Respondent is Michael Lishuai, France.

2. The Domain Name and Registrar

The disputed domain name <thermomix.live> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 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 15, 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 18, 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 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Alfred Meijboom as the sole panelist in this matter on December 28, 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

Thermomix is a business division of the Complainant, which manufactures and sells kitchen appliances through its subsidiaries in 16 countries in Europe, Asia and North America. In 2020, Thermomix generated EUR 1.584 million in sales and an average of 59,900 self-employed sales advisors and 5,900 employees worked for Thermomix.

The Complainant is owner of many registered trademarks, including

- French national trademark THERMOMIX with registration No. 1461124 of April 20, 1988 for goods in classes 7 and 11;
- International Trademark THERMOMIX (device) with registration No. 598910 of February 22, 1993 for goods in classes 7, 11 and 21 for several designated jurisdictions including the People's Republic of China; and
- International trademark THERMOMIX with registration No. 1188472 of September 6, 2013 for goods and services in classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41 for several designated jurisdictions including the European Union (the "THERMOMIX Trademark").

The Respondent registered the disputed domain name on November 7, 2020. The disputed domain name resolves to a parking page with sponsored links.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name incorporates the THERMOMIX Trademark in its entirety, and that the top level domain ("TLD") ".live" should be disregarded for which reason the disputed domain name is confusingly similar to the THERMOMIX Trademark.

According to the Complainant the Respondent does not have rights or legitimate interests regarding the disputed domain name as the disputed domain name carries a high risk of implied affiliation, as it is identical to the THERMOMIX Trademark, so that the disputed domain name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Further, the Complainant alleges that the Respondent does not have rights or legitimate interests regarding the disputed domain name, as it does not own any trademark registration which would provide such legitimate interest, and the Respondent also has no known connection to the Complainant, nor has it received authorization or a license of any kind to resell or use the THERMOMIX Trademark or include it in a domain name. Furthermore, the Complainant alleges that the Respondent is neither making a legitimate noncommercial or fair use of the disputed domain name nor uses it in connection with a *bona fide* offering of goods or services as the disputed domain name resolves to a parking page with pay-per-click ("PPC") links to third parties. And finally, the Complainant alleges that the Respondent is freeriding on the Complainant's reputation and goodwill to mislead unsuspecting Internet users to the website under the disputed domain name, and the Respondent must have chosen to incorporate the THERMOMIX Trademark in the disputed domain name for commercial gain by creating a likelihood of confusion with the THERMOMIX Trademark as to the source or affiliation of the Respondent's website.

The Complainant alleges that the disputed domain name has been registered and used in bad faith because the Respondent either knew or should have known of the THERMOMIX Trademark when he registering the disputed domain name. Further, the Complainant alleges that a PPC search portal is nothing more than a monetized domain name parking page, which is not a *bona fide* use of the disputed domain name, certainly not as the disputing domain name resolves to links to the Complainant's competitors. Moreover, the Complainant alleges that the Respondent intends to profit from its offer to sell the dispute domain name which offer amounts to bad faith registration and use. And finally the Complainant alleges that the

Respondent has chosen the disputed domain name for commercial gain and illegal activities, as it is identical to the THERMOMIX Trademark which causes an implicit risk of confusion by association, intentionally trying to attract internet users to the Respondent's website for profit, creating the possibility of confusion with the Complainant's trademark with respect to its product.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that a respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under 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;
- (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

It is well established that the TLD – in the present case “.live” – may be disregarded in the assessment under paragraph 4(a)(i) of the Policy ([WIPO Overview 3.0](#), section 1.11.1). When ignoring the TLD, the Panel finds that the disputed domain name is identical to the Trademark.

Consequently, the first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant must make a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel takes note of the various allegations of the Complaint and in particular, that no authorization has been given by the Complainant to the Respondent to use the THERMOMIX Trademark to register the disputed domain name and, as the Panel understands the Complainant's allegation, that the Respondent has not been commonly known by the disputed domain name. These allegations of the Complainant remain unchallenged. There is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name.

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 finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant showed that it has registered the THERMOMIX Trademark more than two decades before the Respondent registered the disputed domain name and the Complainant undisputedly alleged that the Trademark had a reputation at the time the Respondent registered the disputed domain name. As the Trademark also has no immediately discernable descriptive meaning, the Panel considers it likely that the Respondent registered the disputed domain name because it was familiar with the THERMOMIX Trademark. Consequently, the Panel is satisfied the disputed domain name was registered in bad faith.

With respect to the Respondent's alleged use of the disputed domain name in bad faith, the Panel concludes that the Respondent has attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's THERMOMIX Trademark through displaying third-party PPC links of services which are also competing with the Complainant's area of business on the website to which the disputed domain name resolves.

Consequently, the Panel finds that the Complainant has also satisfied the third requirement of paragraph 4(a) 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.live> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: January 11, 2023