

## **ADMINISTRATIVE PANEL DECISION**

Vorwerk International AG v. 郑昌松 (zheng chang song), 深圳市全纳科技有限公司 (Shenzhen quanna technology co. LTD.)

Case No. D2022-4998

### **1. The Parties**

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

Respondent is 郑昌松 (zheng chang song), 深圳市全纳科技有限公司 (Shenzhen quanna technology co. LTD.), China.

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

The disputed domain name <thermomixs.com> (the “Domain Name”) is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 27, 2022. On December 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on January 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on the same day.

On January 3, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, Complainant confirmed its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 Respondent of the Complaint in English and Chinese, and the proceedings commenced on January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 30, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on February 3, 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**

Complainant sells household products, including Thermomix kitchen appliances. Thermomix is a business division of Complainant, having its own subsidiaries in 16 countries in Europe, Asia and North America, with over 40 distributors. In 2021, Thermomix generated EUR 1,697 Million in sales, with 59,900 self-employed sales advisors and 5,200 employees.

Complainant owns numerous registered trademarks for THERMOMIX, including:

- Swiss registered trademark number 399741, for THERMOMIX word and figurative mark, registered on February 22, 1993;
- Swiss registered trademark number 523917, for THERMOMIX word and figurative mark, registered on July 21, 2004; and
- Swiss registered trademark number 647702, for THERMOMIX word mark, registered on August 26, 2013.

Complainant also owns and operates numerous domain names with the trademark THERMOMIX, including <thermomix.com>.

The Domain Name was registered on March 17, 2021 and reverts to a webpage that prominently features Complainant's THERMOMIX trademark in a banner, in the featured products and associated description, and which offers household products, such as kitchen appliances for sale.

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

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

Complainant contends that (i) the Domain Name is confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for THERMOMIX and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known THERMOMIX products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its original Complaint in English. In its Complaint and amended Complaint, Complainant confirmed its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name <thermomixs.com> is Chinese.

Complainant asserts that they and their attorneys are unable to communicate in Chinese, that the Domain Name is formed by words in the English language, resolved to a website providing content in English, and that Respondent is targeting Complainant's trademarks and products in Complainant's language of operation, which is English. Complainant also contends that any holding the proceeding in Chinese would cause undue delay, considerable expense, unfair disadvantage and burden Complainant as well as the dispensation of the current matter. Complainant also contend that any resulting delay would pose continuing risk to Complainant and unsuspecting consumers seeking Complainant or its products.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

### **6.2. Substantive Issues**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and are being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions 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.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

#### **A. Identical or Confusingly Similar**

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the THERMOMIX trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the THERMOMIX trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the THERMOMIX trademarks.

With Complainant's rights in the THERMOMIX trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's THERMOMIX trademarks. These THERMOMIX trademarks are recognizable in the Domain Name <thermomixs.com>. In particular, the Domain Name's inclusion of Complainant's trademark THERMOMIX in its entirety, with an addition of the additional letter "s" does not prevent a finding of confusing similarity between the Domain Name and the THERMOMIX trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

#### **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its THERMOMIX trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the THERMOMIX trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the THERMOMIX trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainant asserts that the Domain Name directs to a website that displays products that are practically identical or very similar to Complainant's products. In particular, the Domain Name resolves to a website that feature and offer household products, such as kitchen appliances and other related products, which are practically identical or very similar to those offered by Complainant. Respondent's website also includes unauthorized reproduction of Complainant's THERMOMIX marks, which could mislead Internet users into thinking that the respective website was

authorized, operated by or affiliated with Complainant, and offered THERMOMIX-branded products for sale, all of which have not been rebutted by Respondent. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the THERMOMIX trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's THERMOMIX trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the THERMOMIX trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's THERMOMIX trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the THERMOMIX trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Moreover, the use of and content of the website directed by the Domain

Name <thermomixs.com> - which is almost identical to Complainant's <thermomix.com> domain name and business webpage - also directly associates with and evokes Complainant's business activities in the field of kitchen appliances, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

In addition, the evidence provided by Complainant has shown that the Domain Name directed to a website that displays products that are practically identical or very similar to Complainant's products. Respondent's website also included unauthorized reproduction of Complainant's THERMOMIX marks, which could mislead Internet users into thinking that the respective website was authorized, operated by or affiliated with Complainant, and offered THERMOMIX-branded products for sale, all of which have not been rebutted by Respondent. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known THERMOMIX products and services of Complainant or authorized partners of Complainant. The use of the THERMOMIX mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to a webpage that appears to evoke Complainant's products could result in causing confusion with Complainant's authentic products and business activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. These unauthorized products further may not comply with the safety and quality control efforts of Complainant and may result in health and safety concerns for misled Internet consumers, implicating and damaging Complainant's reputation and interfering with Complainant's business activities in the process.

Further, the Panel also notes the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element 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 Domain Name <thermomixs.com> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: February 15, 2023