

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Unknown Registrant / Celin Dolim, Paris
Case No. D2022-2414

1. The Parties

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

The Respondent is Unknown Registrant / Celin Dolim, Paris, France.

2. The Domain Name and Registrar

The disputed domain name <6thermomix.com> 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 July 1, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 verified that the 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 August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. Aside from an informal communication, the Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 12, 2022.

The Center appointed George R. F. Souter as the sole panelist in this matter on September 19, 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 Swiss company, with a history of more than 130 years trading. It operates a division, Thermomix, which sells multifunctional kitchen appliances. In the 2020's, the Thermomix division has generated EUR 1,584 million in sales, and has an average of 59,900 self-employed administrators, and has 5,900 direct employees, and has direct-selling operations in 70 countries.

Details of extensive registrations of its THERMOMIX trademarks internationally have been supplied by the Complainant to the Panel. These trademark registrations include Swiss registration number D002009038408, registered on November 25, 2009.

The disputed domain name was registered on June 20, 2022, and according to the evidence submitted by the Complainant, it resolved to a website offering for sale Complainant's goods under the THERMOMIX brand.

Currently, the disputed domain name resolves to an inactive site.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its THERMOMIX trademark, containing its THERMOMIX trademark in its entirety, with the mere addition of an initial number, "6".

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, the Respondent is not known by the disputed domain name, and that the Complainant has never granted the Respondent permission to use its THERMOMIX trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith in connection with a website to sell suspicious products bearing the THERMOMIX trademark, and by reproducing the Complainant's copyright content without authorization.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In the informal communication, the Respondent stated (in French): "Ok I would like to cancel my account."

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

- (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 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 Panel finds that the Complainant has trademark rights to its THERMOMIX trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the gTLD “.com” to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainant’s THERMOMIX trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademark. The mere addition of the numeral “6” does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name at issue.

B. Rights or Legitimate Interests

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case. The Respondent rather stated that it wishes to cancel the registration of the disputed domain name.

Furthermore, the nature of the disputed domain name, incorporating the Complainant’s well-known THERMOMIX trademark, carries a risk of implied affiliation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.5.1.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain name.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainant’s trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified in connection with the disputed domain name, and so finds.

The website operated under the disputed domain name has been shown to the Panel, who found it remarkably similar to the Complainant’s website, and the Complainant has commented that the goods offered for sale are “suspicious”, and at a price well below the price of genuine goods sold by the Complainant. It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with the sale of counterfeit goods constitutes use of the disputed domain name in bad faith. In the circumstances of the present case, and noting that the Respondent has not given any credible explanation for the Respondent’s choice of the domain name, the Panel finds that the disputed domain name is also being used in bad faith.

Regarding the current use of the disputed domain name, and taking into consideration the totality of the circumstances of this case, the Panel notes that the non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview](#)).

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy, in respect of the disputed domain name.

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, <6thermomix.com> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: October 3, 2022