

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. James

Case No. D2022-4232

1. The Parties

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

The Respondent is James, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <thermomixer.com> is registered with Megazone Corp., dba HOSTING.KR (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on November 8, 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 9, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On November 14, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On November 23, 2022, the Complainant requested for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. Due to an administrative oversight, it appeared that the Center's Notification emails were not copied to the Respondent's email address. On January 16, 2023, the Center granted the Respondent a ten-day period, through January 26, 2023, to indicate whether it wishes to participate to this proceeding. The Respondent did not submit any response.

On January 27, 2023, the Center informed the Parties that it will proceed to appoint an Administrative Panel for the proceedings.

The Center appointed Kathryn Lee as the sole panelist in this matter on February 1, 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 a Swiss company in the business of household and kitchen appliances, carpets, and cosmetics. It was founded in 1883 and now has subsidiaries in 16 countries and direct selling operations in 70 countries, with around 590,000 employees around the world. Among its products is the Thermomix, a hybrid word from the Greek “thermos” meaning heat and the English “mix”, a food processor with a thermostatically controlled heating element, which allows for functions such as mixing, steaming, emulsifying, precise heating, and kneading in a single appliance. The first model of the Thermomix was launched in 1961 and in the 2020s, the Thermomix generated EUR 1.584 billion in sales revenues. The department dedicated to the Thermomix product has around 59,900 sales advisors and 5,900 employees. The Complainant owns a number of trademark registrations for the THERMOMIX trademark including the below:

- Registration Number 94951 registered on November 24, 1977, in Ireland
- Registration Number 003772341 registered on October 31, 2005, in the European Union
- Registration Number 122510 registered on September 12, 1980, in New Zealand,
- Registration Number 07011141 registered on June 13, 2007, in Malaysia,
- Registration Number 4003288560000 registered December 11, 1995, in the Republic of Korea, and
- Registration number 311961 registered on November 14, 2001, in Uruguay.

The Respondent appears to be located in the Republic of Korea.

The disputed domain name was registered on December 23, 2013, and resolves to a website showing pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the THERMOMIX trademark in which the Complainant has rights since the only difference is the suffix “er” which does not change the overall impression of a connection with the Complainant’s trademark THERMOMIX and does not avoid likelihood of confusion.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant states that the disputed domain name is linked to a website containing advertisement links, and contends that it is not in use and has never been in use in connection with a legitimate noncommercial or fair use, nor with a *bona fide* offering of goods and services.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. Specifically, the Complainant contends that THERMOMIX is a famous trademark and that the Respondent either knew or should have known of the trademark when registering the disputed domain name. The Complainant also contends that the disputed domain name displays pay-per-click links to the Complainant’s competitors and displays an offer for sale of the disputed domain name both of which constitute use in bad faith. The Complainant also asserts that the Respondent created a likelihood of confusion with the Complainant and its trademark for the Respondent’s own commercial gain.

B. Respondent

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

6. Discussion and Findings

A. Language of Proceedings

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent subsequently chose not to submit any response.

The Panel finds it proper and fair to render this decision in English. Given the fact that the Complainant is based in Switzerland and the Respondent is based in the Republic of Korea, English would appear to be the fairest neutral language for rendering this decision. Further, the disputed domain name is composed of Latin characters and the webpage to which the disputed domain name resolved displayed links in English. Besides, both Parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. Accordingly, the Panel determines that rendering the decision in English is fair and procedurally efficient given the circumstances of this case.

B. Identical or Confusingly Similar

The Complainant has demonstrated with supporting evidence that it has rights to the trademark THERMOMIX. As for the disputed domain name, it consists of "thermomixer" which incorporates the Complainant's trademark in its entirety, combined with the suffix "er". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a domain name is considered confusingly similar to a trademark if it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name". In this regard, the THERMOMIX mark is incorporated in the disputed domain name in its entirety and is readily recognizable within the disputed domain name. The additional letters "er" do not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

For the reason mentioned above, the Panel finds that the first element has been established.

C. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

D. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

First of all, the registration of the disputed domain name which is confusingly similar to the Complainant's well-known trademark THERMOMIX, by an entity which is not affiliated with the Complainant, creates a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

In addition, the Respondent likely knew of the Complainant and the Complainant's trademark when registering the disputed domain name given that "thermomix" is a coined term and "er" is a common suffix. The Respondent has not provided any explanation for having registered the disputed domain name, and with no response to claim otherwise, the Panel finds that it is more probable that the Respondent learned of the availability of the disputed domain name and registered it with the intention of benefiting from the fame of the THERMOMIX trademark. Indeed, by linking the disputed domain name with a parking page displaying pay-per-click links, the Respondent created a likelihood of confusion and benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy. In fact, the term "thermomixer" references the "mixer" function of the Thermomix device, which adds to the likelihood of confusion.

Accordingly, the Panel finds that the third element has been established.

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, <thermomixer.com>, be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: February 15, 2023