

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Wis INC

Case No. D2022-4234

1. The Parties

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

The Respondent is Wis INC, Cayman Islands, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <shopthermomix.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 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 disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 11, 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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on January 17, 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 company in the business of household appliances, whose parent company Vorwerk was founded in 1883. The Vorwerk group has around 590,000 collaborators, including independent sales partners and employees.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
	UK00903772341	United Kingdom	October 31, 2005
	3055638	United States of America	January 31, 2006
THERMOMIX	4762314	United States of America	June 30, 2015
THERMOMIX	1461124	France	September 30, 1988
THERMOMIX	0000830470	Italy	January 10, 2001
	006289607	European Union	July 2, 2008

The Complainant owns, among others, the domain name <thermomix.com>, which resolves to the Complainant's official website.

The Respondent registered the disputed domain name <shopthermomix.com> on December 9, 2019, which resolves to a parked website that includes pay-per-click links, as well as a link that redirects to the website "www.afternic.com" where apparently the disputed domain name is being offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends:

Identical or Confusingly Similar

That the disputed domain name is identical to the point of creating confusion concerning the Complainant's trademark THERMOMIX.

That there is an undeniable phonetic and graphic identity between the disputed domain name and the Complainant's trademark. The disputed domain name entirely incorporates the THERMOMIX trademark, with the addition of the term "shop", which is not sufficient to prevent a finding of confusing similarity with the Complainant's trademark.

That previous panels appointed under the Policy have found that the addition of other terms to a disputed domain name would not prevent a finding of confusing similarity under the first element of the Policy.

That prior UDRP panels have found that the fact that a domain name that wholly incorporates a complainant's trademark is enough to establish identity or confusing similarity.

That the addition of the generic Top-Level Domain ("gTLD") ".com" should be disregarded, as it has no impact on the analysis of whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

Rights or Legitimate Interests

That the Respondent knew or should have known of the Complainant's exclusive rights in the THERMOMIX trademark before registering the disputed domain name.

That the Respondent does not have any rights to or legitimate interests in the disputed domain name as it does not own any trademark registration.

That the Respondent does not have any known connection with the Complainant, nor has it received any authorization or license of any kind to use the THERMOMIX trademark in any domain name.

That, under the Policy, it is well established that registering a domain name for nothing more than advertising it for sale, does not support a finding of rights to or legitimate interests in favor of the Respondent.

That the fact that the Respondent is also using the website to which the disputed domain name resolves to make available pay-per-click links does not give the Respondent rights to or legitimate interests in the disputed domain name.

That the Respondent has been using the Complainant's trademark to attract Internet users to the website to which the disputed domain name resolves, to benefit from pay-per-click links displayed on said website.

That previous panels appointed under the Policy have found that a disputed domain name identical to a complainant's trademark carries a high risk of implied affiliation, and that such composition cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the complainant.

That the Respondent is free-riding on the Complainant's reputation and goodwill in order to mislead unsuspecting Internet users to the website to which the disputed domain name resolves, and that the Respondent chose the Complainant's trademark THERMOMIX for commercial gain by creating a likelihood of confusion with said trademark as to source or affiliation.

Registered and Used in Bad Faith

That the disputed domain name has been used in bad faith by the Registrant, considering that the Complainant's trademarks and domain names were registered well before the date of registration of the disputed domain name.

That Thermomix is not a generic term, and that the search engine Google directs Internet users to the Complainant's products and services, which indicates a connection between the Complainant and the THERMOMIX trademark.

That, as such, the Respondent either knew or should have known of the Complainant's trademark when registering the disputed domain name.

That the Respondent's choice to register the disputed domain name was deliberate to benefit from the reputation and goodwill of the Complainant's trademark, which denotes bad faith.

That previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated party can in itself create a presumption of bad faith.

That a website that hosts pay-per-click links constitutes the monetization of a parked domain name, which is not a *bona fide* use of said domain name.

That, additionally, the website to which the disputed domain name resolves contains a link that redirects to the website “www.afternic.com” where the disputed domain name is offered for sale for USD 799, which amount exceeds the Respondent’s documented out-of-the-pocket costs related to the disputed domain name.

That the Respondent concealed its identity through the use of a privacy service.

That the Respondent chose the disputed domain name for commercial gain and illegal activities. That this causes an implicit risk of confusion by association, intentionally trying to attract Internet users to the website to which the disputed domain name resolves.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (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 was registered and is being used in bad faith.

Given the Respondent’s failure to submit a Response, the Panel may decide this proceeding based on the Complainant’s undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the Complainant’s trademark THERMOMIX, as it incorporates said trademark entirely, with the addition of the term “shop”, which does not prevent a finding of confusing similarity (see sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

The addition of the gTLD “.com” to the disputed domain name constitutes a technical requirement of the Domain Name System. Therefore, it is typically disregarded under the first element confusing similarity test (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#), and *Société Air France v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues*, WIPO Case No. [D2019-0578](#)).

In light of the above, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proven to be the owner of several registrations for the THERMOMIX trademark in different jurisdictions, including in the United Kingdom where the Respondent appears to be located.

The Complainant has asserted that there is no relationship or affiliation between the Complainant and the Respondent, that it has not granted any license or authorization to the Respondent to use its trademark, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#); and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The case file contains no evidence that demonstrates that the Respondent has used or has made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services (see *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#); and *Associated Newspapers Limited v. Manjeet Singh*, WIPO Case No. [D2019-2914](#)).

The Respondent's election of the disputed domain name, which fully comprises the Complainant's trademark and the term "shop", shows that the Respondent has targeted the Complainant, its trademark, and its activities. The nature of the disputed domain name also carries a risk of an implied affiliation with the Complainant.

The Complainant has argued that the website to which the disputed domain name resolves consists of a parked website comprising pay-per-click links. The Respondent did not challenge these allegations. This type of conduct cannot be considered as a legitimate noncommercial or fair use of the disputed domain name (see *McKenzie Global Holdings Limited v. Paul Strube*, WIPO Case No. [D2017-1857](#), and *Government Employees Insurance Company ("GEICO") v. Registration Private, Domains By Proxy, LLC / Kanetria Kitchens*, WIPO Case No. [D2022-2284](#)).

Paragraph 4(c) of the Policy establishes that the aforementioned conduct cannot constitute a *bona fide* offer, because the use of the disputed domain name, which is confusingly similar to the Complainant's trademark, for a website displaying pay-per-click links has capitalized on the reputation and goodwill of the Complainant's name and the trademark THERMOMIX.

In sum, the Complainant has made a *prima facie* case asserting that the Respondent lacks rights to or legitimate interests in the disputed domain name. Therefore, the burden of production to demonstrate rights to or legitimate interests in the disputed domain name has been shifted to the Respondent, who in this case has failed to ascertain them (see sections 2.1 of the [WIPO Overview 3.0](#), see also *Harpo, Inc. and Oprah's Farm, LLC v. Robert McDaniel*, WIPO Case No. [D2013-0585](#); *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

Therefore, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The Complainant has ascertained its rights over the THERMOMIX trademark in several jurisdictions. The dates of registration of the Complainant's trademarks significantly precede the date of registration of the disputed domain name.

Given the fact that THERMOMIX is a fanciful trademark, which is not a dictionary word, this Panel finds that the Respondent knew the Complainant at the time of registration of the disputed domain name, also considering that the Complainant's parent company Vorwerk has been in business since 1883, and that the Complainant and its trademark THERMOMIX have a widespread market presence internationally. Therefore, the registration of the disputed domain name, which entirely comprises said trademark THERMOMIX, constitutes bad faith registration under the Policy. (See section 3.2.2 of the [WIPO Overview 3.0](#); see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#) "The Panel infers, in the absence of any submissions, explanation or evidence to the contrary, that Respondent knew or must have known of Complainant's TRADE MARK at the time it registered the Domain Name. The MONEYCORP trade mark has been in public use since approximately 1979 and Complainant has previously registered Complainant's Trade Mark in at least the United Kingdom and the United States of America. It is therefore reasonable to infer that Respondent knew or must have known of Complainant's Trade Mark.")

The fact that the Respondent registered the disputed domain name which entirely reproduces the Complainant's trademark THERMOMIX, shows that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

Moreover, as stated in the discussion of the preceding factor of the Policy, the disputed domain name resolves to a parked website comprising pay-per-click links. Therefore, this Panel considers that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant by misleading Internet users, for commercial gain, to the website to which the disputed domain name resolves by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of said website, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *Ustream.TV, Inc. v. Vertical Axis, Inc.*, WIPO Case No. [D2008-0598](#). "The Respondent's use of the disputed domain name for a PPC parking page constitutes bad faith use because the Respondent is

attracting Internet users to its website by causing confusion as to whether its website is, or is associated with, the Complainant or its services. This conduct disrupts the Complainant's business by diverting consumers away from the Complainant's website. The diversion is for the Respondent's commercial gain because the Respondent receives PPC revenue from those visitors to its website who click through to the advertising on the site. Thus, the Respondent's conduct constitutes classic bad faith registration and use under paragraph 4(b)(iv) of the Policy [...].”).

Another indicator of bad faith is the pattern of cybersquatting in which the Respondent has been involved (see, among others, *National Federation of State High School Associations v. W S, WIS INC*, WIPO Case No. [D2022-3605](#), *Pixabay GmbH v. Whois Privacy Protection Service, Inc. / WIS INC*, WIPO Case No. [D2022-2550](#), *Lincoln Global, Inc., The Lincoln Electric Company v. Registration Private, Domains by Proxy, LLC / W S, WIS INC*, WIPO Case No. [D2021-4380](#), *Sodexo v. Registration Private, Domains By Proxy, LLC / W S, WIS INC*, WIPO Case No. [D2021-4297](#), and *Jake's Fireworks Inc. v. Domains By Proxy, LLC / W S, WIS INC*, WIPO Case No. [D2021-2519](#)). This pattern further supports a finding of bad faith according to paragraph 4(b)(ii) of the Policy (see section 3.1.2 of the [WIPO Overview 3.0](#)).

In light of the above, the third element of the Policy has been proven.

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 <shopthermomix.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: January 31, 2023