

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Host Master, Transure Enterprise Ltd
Case No. D2022-4237

1. The Parties

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

The Respondent is Host Master, Transure Enterprise Ltd, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <thermomix-cookeo.com> (the “Domain Name”) is registered with Above.com, Pty Ltd. (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 Domain Name. On November 15, 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 16, 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 21, 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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on December 27, 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 the owner of the trade mark THERMOMIX registered, *inter alia*, as International mark (registration No. 598910) for home appliances since 1993.

The Domain Name registered in 2019 has been offered for sale generally and used for competing commercial pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the trade mark THERMOMIX registered, *inter alia* as International mark (registration No. 598910) for home appliances since 1993.

The Domain Name registered in 2019 is confusingly similar to the Complainant's mark fully incorporating it and adding a hyphen, the term "cookeo" and a generic Top-Level Domain ("gTLD") ".com".

The Respondent does not have any rights or legitimate interests in the Domain Name, is not commonly known by it and is not authorised by the Complainant.

The Domain Name has been offered for sale generally and has been used for competing pay-per-click links. This is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Respondent has intentionally taken advantage of the Complainant's reputation to divert and confuse Internet users for commercial gain and has offered the Domain Name for sale generally. The Respondent has registered and used the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's THERMOMIX mark (which is registered, *inter alia* in as an International registration for home appliances since 1993), a hyphen, the word "cook", the letters "eo", and the gTLD ".com".

Previous UDRP panels have found confusing similarity when a respondent merely adds a dictionary word and/or random letters to a complainant's mark in a domain name. The Panel agrees that the addition of the word "cook" and the letters "eo" to the Complainant's mark does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trade mark which is still recognisable in the Domain Name. Nor does the addition of a hyphen since punctuation marks are also disregarded in the determination of confusing similarity. Finally, nor does the addition of the gTLD ".com" which is a necessary and, typically, merely functional part of a domain name.

Accordingly, the Panel holds that the Domain Name is confusingly similar for the purpose of the Policy to a mark in which the Complainant has rights.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark and there is no evidence or reason to suggest the Respondent is, in fact, commonly known by the Domain Name.

The Domain Name has been used for competing pay-per-click links which does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The page to which the Domain Name resolves suggests the Domain Name is for sale and invites communications in this regard. Offering a domain name that contains the recognised trade mark of a third party for sale generally is also suggestive of a lack of rights or legitimate interests.

The Respondent has not answered this Complaint or rebutted the *prima facie* case evidenced by the Complainant as set out herein.

As such, the Panel finds that the Respondent does not have rights or legitimate interests in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

The Domain Name containing the Complainant's THERMOMIX mark has been offered for sale generally. In such circumstances, UDRP panels have commonly found that the that the respondent has registered and used the domain name in bad faith under Policy, paragraph 4(b)(i). In the absence of any representations from the Respondent, this Panel also makes this finding.

The Domain Name has also been used for competing pay-per-click links. Use for pay-per-click links indicates bad faith being disruptive of the Complainant's business and diverting and confusing Internet users for commercial gain and can indicate actual knowledge of the Complainant and its business. In this case, the pay-per-click links include those relating to home electrical appliances making it more likely than not that the Respondent is aware of the Complainant and its rights, business, and products.

As such, the Panelist believes that the Complainant has made out its case that the Domain Name was registered and is being used in bad faith and has satisfied the third limb of the Policy under paragraphs 4(b)(i), (iii), and (iv).

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, <thermomix-cookeo.com>, be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: January 10, 2023