

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Ross Tipton

Case No. D2022-4494

1. The Parties

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

The Respondent is Ross Tipton, United States of America.

2. The Domain Name and Registrar

The disputed domain name <theromix.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 24, 2022. On November 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 24, 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 29, 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 29, 2022.

On November 30, 2022, an email was sent to the Center from the Respondent’s email address, simply stating: “The name was put up for sale”.

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 Amended Complaint, and the proceedings commenced on December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022.

On December 27, 2022, the Center advised the parties that, as no Response to the Amended Complaint had been filed, it would proceed to appoint a panel. The Center appointed Warwick Smith as the sole panelist in

this matter on January 11, 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-registered corporation. It sells multifunctional kitchen appliances under the mark THERMOMIX, through its "Thermomix" division. According to the Amended Complaint, it sells into 70 countries around the world, operating through a total of 16 subsidiary companies and over 30 independent distributors, in Europe, Asia, and North America. The Complainant group employs approximately 12,000 people around the world.

The Complainant says that the Thermomix division has a 130 - year history, during which time it has established an international reputation for high quality, innovative products.

The Complainant is the registered proprietor of the mark THERMOMIX in numerous jurisdictions around the world, including the United States where the Respondent appears to reside. It is not necessary to refer to all of the Complainant's THERMOMIX registrations. For the purposes of this decision the Panel need only refer to one of the Complainant's United States registrations: the Complainant is the proprietor of the word mark THERMOMIX, under registration number 4762314. This mark, which was registered on June 30, 2015, covers a variety of goods and services in numerous international classes.

The disputed domain name was first registered on November 21, 2018. The Registrar's Whois particulars provided by the Complainant show that the registration was "updated" on November 22, 2021, and it may be that that was when the Respondent acquired the disputed domain name. Whatever might be the position in that regard, the Complainant says that it did not become aware of the disputed domain name until October 5, 2022. At that time, the disputed domain name resolved to a Registrar's parking page, containing advice that the disputed domain name was available for sale through "Go Daddy" services. According to the Complainant, the Registrar's Whois service advised that the disputed domain name was considered to be a premium domain name. It was offered for sale for around USD 1,500.

The Complainant lodged a trade mark complaint with the Registrar, contending that the registration of the disputed domain name contravened the Registrar's terms of service. On October 25, 2022, the Registrar advised that the disputed domain name would be removed from its aftermarket services.

As at November 23, 2022, the disputed domain name still resolved to the Registrar's parking page, where the message was displayed: "This domain may be for sale."

The Complainant has not licensed or otherwise authorized the Respondent to register the disputed domain name, and at the date of the Amended Complaint the Respondent appears to have been making no active use of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the THERMOMIX mark, in which it has rights. The disputed domain name entirely incorporates the THERMOMIX mark, differing only by the deletion of the letter "m". That alteration is insufficient to differentiate the disputed domain name from the THERMOMIX mark, and the registration was an act of typosquatting. A number of UDRP panel decisions have established that the practice of typosquatting involves an intention to confuse, and that proved typosquatting may be sufficient to establish confusing similarity for the purposes of paragraph 4(a)(i) of the Policy.

The Complainant next contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. All of the Complainant's THERMOMIX marks were registered before the Respondent registered the disputed domain name, and the Respondent knew, or should have known, of the Complainant's exclusive rights in the THERMOMIX mark before he registered the disputed domain name. The Respondent has no known connection to the Complainant, and has received no authorization from the Complainant to resell or use the THERMOMIX mark, or to include it in a domain name. The Respondent has not been using the disputed domain name in connection with any *bona fide* offering of goods or services, and has not been making any legitimate noncommercial or fair use of the disputed domain name. Indeed, the Respondent has been making no active use of the disputed domain name at all.

Registering a domain name and doing no more with it than advertising it for sale does not support a respondent's claim to a right or legitimate interest under the Policy. Furthermore, it is difficult to imagine a situation where the Respondent could offer goods or services through the disputed domain name that would not infringe the Complainant's rights in its THERMOMIX mark.

Finally, the Complainant contends that the Respondent registered the disputed domain name, and has been using it, in bad faith.

The Complainant's THERMOMIX mark is known throughout the world, and the term "thermomix" is not merely a name – Google searches on "thermomix" direct Internet users to websites that feature the Complainant and its goods and services.

The Respondent chose the disputed domain name deliberately, for its substantial similarity to the Complainant's THERMOMIX mark. The Respondent's likely intention was to benefit from the reputation and goodwill the Complainant has built up in its THERMOMIX mark, and that is an indicator of bad faith.

The fact that the Respondent concealed his identity by using a privacy service when he registered the disputed domain name is a further indicator of bad faith registration and use.

B. Respondent

Apart from the email dated November 30, 2022, in which the Center was advised "The name was put up for sale", the Respondent did not respond to the Amended Complaint.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a Complainant is required to establish each of the following –

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has proved this part of the Amended Complaint.

The Complainant is the registered proprietor of the mark THERMOMIX in the United States, and in numerous jurisdictions around the world. That is sufficient for it to establish "rights" in that mark for the purposes of paragraph 4(a)(i) of the Policy.

The disputed domain name differs from the Complainant's THERMOMIX mark only by the deletion of the first letter "m" from the term "thermomix. This appears to be an intentional misspelling of the Complainant's THERMOMIX mark, and UDRP panels have consistently regarded such disputed domain names as confusingly similar to the complainant's mark for the purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states at section 1.9:

"A domain name which consists of a common, obvious or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. . . ."

In this case, the misspelling is obvious. The visual similarity between the disputed domain name and the THERMOMIX mark is very close.

Finally, the Complainant is correct in submitting that the generic Top-Level Domain ("gTLD") ".com" should not be taken into account in the comparison that is required by paragraph 4(a)(i) of the Policy. The gTLD is a technical requirement of registration, and is not normally considered to have legal significance in applying paragraph 4(a)(i).¹

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy set out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy. The circumstances are –

- (i) Before any notice to [the respondent] of the dispute, use by [the respondent] of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Where [the respondent] (as an individual business or other organization) [has] been commonly known by the disputed domain name, even if [the respondent has] acquired no trade mark or service mark rights; or
- (iii) Where [the respondent is] making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly direct consumers or to tarnish the trade mark or service mark at issue.

[WIPO Overview 3.0](#) states the following on the burden of proof under paragraph 4(a)(ii) of the Policy:

"While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

In this case, the disputed domain name is confusingly similar to the Complainant's THERMOMIX mark, which the Panel accepts is well known around the world. There is nothing to suggest that the Respondent has been commonly known by the disputed domain name, and the Respondent has not been licensed or otherwise authorized to use the Complainant's THERMOMIX mark.

¹ [WIPO Overview 3.0](#), paragraph 1.11.

There is no evidence of the disputed domain name having been used in connection with any offering of goods or services, nor evidence of any demonstrable preparations to make any such use of the disputed domain name.² There is thus nothing to suggest that the Respondent might have been able to establish a right or legitimate interest under paragraph 4(c)(i) of the Policy. And the Respondent appears to have made no legitimate non-commercial or fair use of the disputed domain name, such as might have suggested a possible right or legitimate interest under paragraph 4(c)(iii) of the Policy.

Those matters in combination are sufficient to establish a *prima facie* case under paragraph 4(a)(ii) of the Policy. The evidential burden of showing rights or legitimate interests in respect of the disputed domain name therefore moves to the Respondent. In the absence of any Response, the Respondent has failed to discharge that evidential burden, and the Complainant's *prima facie* proof must prevail. The Complainant has made out its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, the following circumstances, without limitation, are deemed (if found by the Panel to be present) to be evidence of the registration and use of a domain name in bad faith –

- (i) Circumstances indicating that the holder 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) The holder has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) The holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 holder's website or location or of a product or service on the holder's website or location.

The Complainant has also sufficiently proved this part of the Amended Complaint.

The Panel has found that the disputed domain name is confusingly similar to the Complainant's THERMOMIX mark, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has offered no explanation for his decision to register / acquire the disputed domain name, and given the apparently world-wide reputation of the THERMOMIX mark, it is difficult to conceive of any *bona fide* use the Respondent might have made of the disputed domain name. Internet users who were familiar with the Complainant's Thermomix products would inevitably assume that any website at the disputed domain name was owned by, or affiliated or endorsed by, the Complainant.

The Complainant says that Google searches on "thermomix" all direct the Internet user to websites that feature the Complainant and its goods and services. In those circumstances, it seems unlikely that the Respondent would have been unaware of the Complainant when he registered / acquired the disputed domain name. Consistent with that, the Respondent did not suggest in his email to the Center dated November 30, 2022, that he was unaware of the Complainant's THERMOMIX mark (although one would have expected him to say something to that effect if he found himself confronted with a complaint filed by a

² Merely advertising a disputed domain name for sale, as the Respondent has done in this case, does not constitute a legitimate interest for the purposes of paragraph 4(c)(i) of the Policy – *Ruby's Diner Inc. v Joseph W Popow*, WIPO case No. [D2001-0868](#).

complainant of whom he was completely unaware). In the absence of any Response, the Panel concludes that it is more likely than not that the Respondent was aware of the Complainant and its THERMOMIX mark when he registered / acquired the disputed domain name, and that he completed the transaction with a view to obtaining a financial benefit that would arise at some future time as a result of the confusing similarity between the disputed domain name and the THERMOMIX mark.

Having regard to those considerations, and in the absence of any Response, the Panel concludes that the disputed domain name was probably registered or acquired by the Respondent for the bad faith purpose of deriving financial gain from the deliberate creation of confusion between the disputed domain name and the Complainant's THERMOMIX mark.

Paragraph 4(a)(iii) of the Policy also requires the Complainant to prove that the disputed domain name is being *used* in bad faith. That might be thought to create a difficulty where the only "use" to which the disputed domain name has been put has been to offer it for sale. However, UDRP panels have consistently held that mere passive holding of a disputed domain name may constitute bad faith use of that domain name, if certain factors are present.

The consensus view of WIPO panels on the issue of "passive holding" of a disputed domain name (that is, registration with no subsequent active use), is summarized in [WIPO Overview 3.0](#) as follows³:

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors which have been considered relevant in applying the passive holding doctrine include:

- (i) The degree of distinctiveness or reputation of the complainant's mark;
- (ii) The failure of the respondent to submit a response, or to provide any evidence of actual or contemplated good faith use;
- (iii) The respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) The implausibility of any good faith use to which the domain name may be put.

Each of those factors is present in this case.

First, the Complainant appears to have a substantial international reputation in its THERMOMIX mark. It has built up that reputation over a period of around 130 years, and it sells its products in no fewer than 70 countries around the world.

Secondly, the Respondent has failed to submit any Response, and has failed to even suggest any good faith use to which the disputed domain name might be put.

Thirdly, the Registrar's Whois database available to the Complainant did not disclose the Respondent's name and contact details: they showed the registrant as "Registrant Private, Domains by Proxy LLC". The Respondent's name and contact details were only disclosed by the Registrar, when the Center sent its usual verification request to the Registrar.

Fourthly, and in the absence of any Response to the Complaint, it is difficult to conceive of any good faith use the Respondent might make of the disputed domain name. The Respondent has not suggested that "theromix" is a dictionary word, or generic expression, in any language, and any likely use would be likely to cause confusion with the Complainant's THERMOMIX mark.

³ [WIPO Overview 3.0](#), section 3.3.

It is true that the circumstances of this case may not fall clearly within any of the subparagraphs of paragraph 4(b) of the Policy, but those paragraphs are only illustrative of the circumstances that may constitute bad faith registration and use. They are not intended to provide an exhaustive list of the circumstances that will qualify as bad faith registration and use.⁴

Having regard to those considerations, and in the absence of any Response, the Panel concludes that the disputed domain name has been (passively) used by the Respondent in bad faith, and that the Complainant has therefore satisfied both the bad faith registration and bad faith use elements of paragraph 4(a)(iii) of the Policy.

The Complainant having satisfied each of the three elements of paragraph 4(a), there will be an order transferring the disputed domain name to the Complainant.

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 <theromix.com> be transferred to the Complainant.

/Warwick Smith/

Warwick Smith

Sole Panelist

Date: January 25, 2023

⁴ *Aria Foods Ambg v Michael Guthrie*, WIPO Case No. [D2016-2213](#); and *Tetra Laval Holdings & Finance SA v Evelyn Bryant, Glen Cleaning*, WIPO Case No. [D2022-4264](#).