

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. 杨智超 (Zhichao Yang)

Case No. D2022-4221

1. The Parties

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

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <thetmomix.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 7, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 in English on November 23, 2022.

On November 9, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted its request that English be the language of the proceeding on November 23, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 22, 2022.

The Center appointed Jonathan Agmon 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, Vorwerk International AG, is part of the Vorwerk Group (“Vorwerk”) which has been operating for more than 130 years with an estimated 590,000 people working for Vorwerk worldwide including independent sales partners and employees. Thermomix is a business division of Vorwerk with direct selling operations in 70 countries and 5,900 employees. In 2020, Thermomix generated EUR 1,584 million in sales.

The Complainant is the registered trademark owner of the THERMOMIX word and formative trademarks worldwide, including but not limited to:

- Canada Trademark Registration No. TMA250502 for THERMOMIX, registered on September 19, 1980;
- France Trademark Registration No. 1461124 for THERMOMIX, registered on April 20, 1988; and
- International Trademark Registration No. 834825 for  , registered on July 21, 2004, designating, among others, China.

The Complainant also states that it owns the registration of the domain names containing the THERMOMIX mark, including but not limited to, <thermomix.com>.

The disputed domain name was registered on December 27, 2021 and resolves to a parking page with Pay-Per-Click (“PPC”) links to third party websites.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its THERMOMIX mark as the disputed domain name which wholly incorporates the THERMOMIX mark in its entirety with the substitution of the letter “r” for “t” along with a generic Top-Level Domain (“gTLD”) “.com”, are insufficient to avoid confusing similarity.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith in order to intentionally attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following main reasons:

- (i) the Respondent was involved in prior proceedings conducted in the English language;
- (ii) the Complainant and its representatives are unable to communicate in the Chinese language;
- (iii) translating the Complaint into Chinese would cause an undue burden on the Complainant and unnecessarily delay the proceeding; and
- (iv) the disputed domain name and the website to which the disputed domain name resolves to are in the English language.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case”. (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain name resolves to a website in English, that the Respondent has not participated in this proceeding, and that all of the Center’s communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceeding is conducted in a timely and cost-effective manner. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name integrates the Complainant’s THERMOMIX mark in its entirety, with the substitution of the letter “r” for “t” and the addition of the gTLD “.com”.

It is well established that 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 purposes of the first element (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9). The disputed domain name consists of an obvious and intentional misspelling of the Complainant’s THERMOMIX mark and is considered confusingly similar to that mark.

Further, it is well established that the addition of the gTLD “.com”, as a standard registration requirement, is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations long before the disputed domain name was registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant’s trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

There is also no evidence on record showing that the Respondent is commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3). Moreover, the disputed domain name resolves to a website with third party PPC links offering goods and services which compete with or capitalize on the reputation and goodwill of the Complainant, which does not constitute a legitimate noncommercial use or a *bona fide* offering of goods or services (see [WIPO Overview 3.0](#), section 2.9).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant’s *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must also show that the Respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence showing that the disputed domain name directs to an active website providing third party PPC links offering goods and services which compete with or capitalize on the reputation and goodwill of the Complainant. It is well established that the use of a domain name for such purposes to attempt to attract Internet users for commercial gain constitutes bad faith conduct under paragraph 4(a)(iii) of the Policy. Similarly, the Panel finds that the use of the disputed domain name in the present case constitutes evidence of bad faith registration and use.

Given the circumstances of this particular case, including evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks, and the reputation the

Complainant has in its marks, it is suggestive that the Respondent was aware of the Complainant and targeted the Complainant in registering the disputed domain name.

Further, the disputed domain name is confusingly similar to the Complainant's THERMOMIX mark, which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Previous UDRP panels ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)). To this end, prior UDRP panels have established that attracting Internet traffic, for commercial gain, by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the UDRP. The Panel finds that the registration and use of the disputed domain name in this case falls into paragraph 4(b)(iv) of the UDRP.

The Respondent also did not submit a Response in this proceeding. This may be a further indication of the Respondent's bad faith, which was considered by the Panel.

Based on the evidence presented to the Panel, including the registration of the disputed domain name after the registration of the Complainant's trademark, the confusing similarity between the disputed domain name and the Complainant's trademark, the Respondent's use of the disputed domain name, the Respondent's involvement with numerous prior UDRP proceedings, and the failure of the Respondent to submit a response, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

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 <thetmomix.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: January 10, 2023