

## **ADMINISTRATIVE PANEL DECISION**

Thorlabs, Inc. v. Micheal Raymond  
Case No. D2022-4840

### **1. The Parties**

Complainant is Thorlabs, Inc., United States of America (“United States”), represented by Myers Wolin, LLC, United States.

Respondent is Micheal Raymond, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <thor-lab.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 16, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 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 Complainant on December 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 23, 2022.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 10, 2023.

The Center appointed Jeffrey D. Steinhardt, as sole panelist in this matter on February 14, 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**

Complainant is a large optical equipment manufacturer founded in the late 1980s, with offices in the Americas, Europe and Asia. Complainant owns several registrations for the THORLABS trademark, including for example United States Trademark Registration No. 3,753,619, registered in Class 9 on March 2, 2010.

The disputed domain name was registered September 12, 2022 and does not route to an active webpage.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant lists a number of its trademarks and avers that it made unsuccessful efforts to secure transfer of the disputed domain name from the Registrar.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is identical or confusingly similar to Complainant's trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

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

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

##### **A. Identical or Confusingly Similar**

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's THORLABS mark.

UDRP panels commonly disregard Top-Level Domains (“TLDs”) in determining whether a disputed domain name is identical or similar to a complainant’s marks. See, e.g., *HUK-COBURG haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#); *VAT Holding AG v. Vat.com*, WIPO Case No. [D2000-0607](#); and *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Omitting the “.com” TLD from the disputed domain name, the Panel notes that almost the entire mark is included in the disputed domain name, adding only a hyphen and omitting the letter “s”. The Panel finds that these minor modifications to Complainant’s THORLABS mark does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar).

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant’s mark and concludes that the first element of paragraph 4(a) of the Policy is established.

## **B. Rights or Legitimate Interests**

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

Complainant alleges that Respondent has no rights or legitimate interests in the disputed domain name, and avers that Respondent has no business and does not make use of the disputed domain name. Complainant also alleges that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel accepts the Complainant’s inference that Respondent has no relevant trademark rights, authorization or license to use Complainant’s trademark in the disputed domain name. Although Complainant does not expressly address the question, the Panel also finds that Respondent is not commonly known by the disputed domain name.

Since the record shows that the disputed domain name does not route to an active webpage, the Panel further finds that Respondent is not making a *bona fide* use of the disputed domain name.

In light of the evidence, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that a *prima facie* case is established. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in use of the disputed domain name and that the second element of the Policy is established.

### **C. Registered and Used in Bad Faith**

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

UDRP panels may draw inferences about bad faith in light of the circumstances, including passive holding, failure to respond to a complaint and other circumstances. *E.g., Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#) Sections 3.2.1.

Respondent registered a domain name incorporating Complainant's inherently distinctive mark, which has been in widespread use for many years.

It appears beyond dispute that Respondent was aware of Complainant's THORLABS mark and sought to exploit it through registration of the confusingly similar disputed domain name. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g., WIPO Overview 3.0* Sections 3.2.1 and 3.3.

The Panel also finds that Respondent's passive holding of the disputed domain name and its failure to respond to these proceedings evidence Respondent's use of the disputed domain name in bad faith. *Id.*

Accordingly, the Panel concludes that paragraph 4(2)(iii) of the Policy is satisfied.

### **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, <thor-lab.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: February 27, 2023