

## **ADMINISTRATIVE PANEL DECISION**

Vorwerk International AG v. Privacy service provided by Withheld for Privacy ehf / Daniel Hofmann  
Case No. D2022-1601

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Daniel Hofmann, Germany.

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

The disputed domain name <thermo-tm6-mix.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 May 3, 2022. On May 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 May 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 May 10, 2022.

The Center verified that the 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 May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 7, 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 part of an international group which counts with more than 130 years in business. Presently, one of its products is the Thermomix multifunctional kitchen appliance sold at various jurisdictions.

The Complainant owns among others, the following trademarks (Exhibit A to the Amended Complaint):

- International trademark registration No. 118472 for the word mark THERMOMIX, registered on September 6, 2013, in classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41; and

- International trademark registration No. 1481594 for the word mark TM6, registered on March 15, 2019, in classes 7, 9, 11, 16, 21, 41 and 43.

The disputed domain name <thermo-tm6-mix.com> was registered on April 22, 2022, and presently resolves to an active online shop depicting the Complainant's trademarks and logo and what appears to be counterfeit products.

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

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

The Complainant claims that its group originated in 1883 and is currently present in 70 countries, counting with around 590,000 people working worldwide for it. According to the Complainant, its Thermomix multifunctional kitchen appliance is the result of exceptional innovative strength as witnessed by the 151 patents related to it and the revenues generated by it in 2020 of EUR 1,584 in sales. Under the Complainant's view the THERMOMIX trademark has become famous and an exclusive identifier of the Complainant's products.

Also according to the Complainant, the disputed domain name, which reproduces the Complainant's THERMOMIX and TM6 trademarks, is being used in connection with a webpage mimicking the Complainant's official webpages, also reproducing the official photos and videos taken from the Complainant's official websites without any authorization in connection with the offer of suspicious products at lower prices.

Under the Complainant's view, the disputed domain name is confusingly similar to the Complainant's THERMOMIX and TM6 trademarks. The webpage at the disputed domain name displays the unauthorized reproduction of the Complainant's logos and copyrighted promotional materials. The Complainant submits that this only enhances the likelihood of confusion between the disputed domain name and the Complainant's trademarks.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

(i) the Respondent does not own any trademark registration relating to the disputed domain name;

(ii) the Respondent has no known connection or affiliation with the Complainant and has received no authorization of any sort from the Complainant to use the THERMOMIX trademark or include it in any domain name;

(iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, rather showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

(i) the Respondent knew of the Complainant's famous trademarks when registering the disputed domain name given that it is using the disputed domain name to sell suspicious THERMOMIX and TM6 products at the online shop that resolves from the disputed domain name; and

(ii) the exploitation of consumer confusion for the purpose of selling suspicious products which can also risk the safety and health of the misled consumer public.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(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 has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

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

The Complainant has established rights over the THERMOMIX and TM6 trademarks.

The disputed domain name consists of an intercalation of the Complainant's THERMOMIX and TM6 trademarks. Furthermore, the use of the disputed domain name in connection with a webpage purportedly selling the Complainant's products and reproducing the Complainant's logos affirms a finding of confusing similarity between the disputed domain name and the Complainant's trademarks. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.15.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks.

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

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

(i) before any notice of the dispute, the Respondent's use 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) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in choosing not to respond to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent that the Respondent has no known connection or affiliation with the Complainant and has received no authorization of any sort from the Complainant to use the THERMOMIX trademark or include it in any domain name, nor does Respondent own any trademark registration relating to the disputed domain name.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with an online shop reproducing the Complainant's trademarks and logos and selling what appears to be counterfeit goods does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the reproduction of the Complainant's trademarks and logos at the online shop that is available at the webpage relating to the disputed domain name, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Other factors that corroborate the Panel's finding of bad faith of the Respondent are:

- a. the absence of a formal Response by the Respondent;
- b. the choice to retain a privacy protection service so as to conceal the Respondent's identity; and
- c. the indication of what appears to be false or incomplete contact details provided in Whois information relating to the disputed domain name, communication not being delivered to it by courier.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

## 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, <thermo-tm6-mix.com>, be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: June 21, 2022