

## **ADMINISTRATIVE PANEL DECISION**

Vorwerk International AG v. Marcos Company, Mogador  
Case No. D2022-2306

### **1. The Parties**

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

The Respondent is Marcos Company, Mogador, France.

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

The disputed domain name <thermomix.boutique> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 24, 2022. On June 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 2022, the Registrar transmitted by email to the Center its verification response 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 June 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 June 29, 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 June 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2022.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on August 9, 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 an internationally operating company, mainly active in the production and sale of household appliances. It has been in business for more than 130 years and employs about 590.000 people worldwide including about 578.000 as independent sales partners and about 12.000 as employees.

Thermomix is a business division of the Complainant that has direct-selling operations in 70 countries and according to the Complainant, reputation for high quality, innovative products.

In 2020, Thermomix generated EUR 1.584 million in sales. An average of 59.900 self-employed sales advisors and 5.900 employees work for Thermomix.

The Complainant is the owner of several registered trademarks containing the term THERMOMIX in multiple jurisdictions worldwide. Below are details of a few exemplary trademarks (Exhibit A to the Complaint):

- United States trademark registration No. 79141081, THERMOMIX, filed on September 6, 2013, registered on June 30, 2015 in Classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41;
- International Registration No. 1188472 THERMOMIX, with a priority date of September 6, 2013, for goods and services in Classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41 with extensions of protection into several countries worldwide, *inter alia* into the European Union, United States, Mexico and Singapore.
- European Union Trade Mark registration No. 006289607, THERMOMIX, filed on September 19, 2007, registered on July 2, 2008 for goods and services in Classes 7, 28, 35 and 41.

The Complainant is also the owner of, according to the Complainant, more than 1.500 domain names, including <thermomix.com>, <thermomix.de> or <thermomix.info> (Exhibit B to the Complaint).

The disputed domain name <thermomix.boutique> was registered on January 5, 2021. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to a website that offered housed products under the sign THERMOMIX.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that each of the conditions of paragraph 4(a) of the Policy is established in the present case:

The Complainant submits that the disputed domain name is confusingly similar to the trademark THERMOMIX, in which the Complainant has rights. The disputed domain name incorporates the Complainant's trademark in its entirety. The addition of the generic Top-Level Domain ("gTLD") ".boutique" does not diminish the confusing similarity. In fact, the addition of ".boutique" even increases it, because the Complainant owns several domains including the word "boutique", such as <vorwerkboutique.com>.

The Complainant claims that THERMOMIX is a well-known trademark. It further submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has neither acquired a license nor has it received authorization of any sort from the Complainant to use the THERMOMIX mark as a trademark or to include it in a domain name.

In addition, due to the fact that the Respondent uses the sign THERMOMIX on the website available under the disputed domain name in connection with the symbol for registered trademarks, ®, it must have been aware of the fact that THERMOMIX is a registered sign.

The Complainant further claims that the website available under the disputed domain name resembles the Complainant's own main websites imitating its look and feel. It also contains official product pictures of the Complainant. On the website, possibly counterfeit products are offered for sale under the brand THERMOMIX for a price far below the price of the original products.

The purpose of using the disputed domain name can therefore only be, according to the Complainant, that the Respondent is free riding on the Complainant's reputation and goodwill to mislead Internet users. The Complainant points out that the use of the disputed domain name which is confusingly similar to the Complainant's trademarks is, to attract Internet users looking for genuine products of the Complainant's business and instead offer them unauthorized copies is a strategy that lacks *bona fides* and does not give rise to rights or legitimate interests.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The trademarks were registered a long time before the Respondent applied for the disputed domain name.

The Complainant contends that the Respondent selected and used the disputed domain name because it is identical to the THERMOMIX trademark and, thus, creates an implied risk of confusion. It intentionally harms the Complainant's business by distracting and misleading consumers looking for genuine products of the Complainant's business for profit and by damaging the Complainant's reputation by selling suspicious products or unauthorized imitations of the Complainant's products.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4 (a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (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.

In the following, the Panel will discuss in consecutive order whether each of these requirements are met.

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

The test of identity or confusing similarity under the Policy, paragraph 4(a)(i) is limited in scope to a direct comparison between the Complainant's trademark and the textual string which comprises the disputed domain name.

In this case, the Complainant has demonstrated registered trademark rights in the mark THERMOMIX.

The disputed domain name consists of the term THERMOMIX and the generic Top-Level-Domain ("gTLD") ".boutique". The Complainant's trademark THERMOMIX is identically reproduced in its entirety in the disputed domain name. The disputed domain name is identical to the Complainant's trademark. The descriptive gTLD ".boutique" within the disputed domain name is not apt to change this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

However, it is consistent case-law of the UDRP panels that it is sufficient for the Complainant to make a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see e.g. *Credit Agricole S.A. v. Dick Weisz*, WIPO Case No. [D2010-1683](#); *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO Case No. [D2005-1094](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); and *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)).

The Panel notes that with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent, before any notice of the dispute, used or prepared 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.

The Panel further notes that with respect to paragraph 4(c)(ii) of the Policy, there is no evidence that indicates that the Respondent has ever been commonly known by the disputed domain name or has acquired trademark rights in a name corresponding to it.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, and 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 at issue.

On the contrary, the disputed domain name resolves to a website almost identical to the main website of the Complainant itself. The evidence in the record shows that the disputed domain name has been used in connection with a website offering lower priced products under the sign THERMOMIX, which are, according to the Complainant, suspicious, *i.e.* possibly counterfeit, products. The website includes many references to the THERMOMIX trademark and contains official product pictures of the Complainant. Overall, the disputed domain name evokes the impression of being owned and/or operated by the Complainant.

Hence, in view of the Panel, it is more likely than not that the Respondent targeted the THERMOMIX trademark when registering the disputed domain name in order to improperly capitalize on the reputation and goodwill associated with the trademark by confusing Internet users searching for the Complainant's products and luring them to the website under the disputed domain name in order to offer them suspicious products. This conduct is not legitimate and does not give rise to rights or legitimate interests of the Respondent in the disputed domain name (see *Vorwerk International AG v. Elena Moreno*, WIPO Case No. [D2021-3875](#)).

Moreover, the Complainant has not authorized, licensed or permitted in any other way the Respondent to register or use the disputed domain name or its trademarks.

Therefore, the Panel finds that the Complainant has provided sufficient evidence to hold that it is highly likely that the disputed domain name was used for dishonest purposes incapable of conferring any right or legitimate interest in holding the disputed domain name to the Respondent.

Therefore, the Panel finds that the Complainant has satisfied the requirements under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(a)(iii) of the Policy, a complainant has to establish that a respondent registered and used the disputed domain name in bad faith.

The Panel notes that the disputed domain name was registered after the Complainant's trademarks were registered and accepts that the disputed domain name was chosen by reference to the THERMOMIX trademark.

The Panel has no doubt that the Respondent knew or should have known of the Complainant's earlier rights to the sign THERMOMIX and, thus, that the registration of the disputed domain name would infringe upon the Complainant's rights. This is also evidenced by the fact that the Respondent has used the sign THERMOMIX with the symbol for a registered trademark, namely the ®-symbol, on the website under the disputed domain name.

After all, the disputed domain name resolves to a web shop almost identical to the one of the Complainant. According to the undisputed allegations of the Complainant and the evidence submitted by it, the associated website has offered products that are likely to have been counterfeit versions of products offered by the Complainant for a price far below the price of the original products (see *Vorwerk International AG v. Elena Moreno*, WIPO Case No. [D2021-3875](#)).

The diversion of Internet users is a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP panel decisions (see *Louis Dreyfus Trademarks B.V. v. Domain Administrator*; See *Privacy Guardian.org / Geren Wenzhen Gu Mangu Geren*, WIPO Case No. [D2019-0247](#); *Hoffmann-La Roche Inc. v. Samuel Teodorek*, WIPO Case No. [D2007-1814](#); and *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unais, Inc.*, WIPO Case No. [D2005-0623](#)). Bad faith must be assumed where a complainant provides ample evidence that the disputed domain name was registered with the sole purpose of making users believe that they were connecting to a website affiliated to the complainant (see *Louis Dreyfus Trademarks B.V. v. David Rosenberg, Louis Dreyfus Commodities*, WIPO Case No. [D2014-2253](#)).

Since the Panel is already convinced that the Respondent registered and used the disputed domain name in bad faith, it is irrelevant whether the Complainant's marks are recognized as widely-known marks whose unauthorized registration within a domain name may give rise to a presumption of bad faith.

In view of all the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

## 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 <thermomix.boutique> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

**Andrea Jaeger-Lenz**

Sole Panelist

Date: August 22, 2022