

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Habs Food

Case No. D2022-3103

1. The Parties

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

The Respondent is Habs Food, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <thermomix2u.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

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 September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on October 10, 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 a global corporate group founded in Switzerland more than 130 years ago. The Complainant for many years has traded successfully under its THERMOMIX brand, with the Complainant's global group encompassing as many as 590,000 employees working worldwide, including 578,000 independent sales partners and as many as 12,000 employees in 70 countries.

Thermomix is a division of the Complainant and operates in as many as 16 countries in Europe, Asia, and North America, selling multifunctional kitchen appliances. The Complainant reported sales of EUR 1584 million in sales in 2020.

The Complainant is the owner of numerous trademark registrations for its THERMOMIX mark, registered on various dates, such as the International Trademark Registration No. 598910, registered on February 22, 1993. The Complainant also is the holder of over 1,500 domain names, with nearly 400 domain names that reflect the Complainant's THERMOMIX mark.

The disputed domain name <thermomix2u.com> was registered by the Respondent on June 24, 2022, more than 20 years after the Complainant had initially registered the Complainant's now well-known THERMOMIX mark. The Respondent since has used the disputed domain name with a website prominently displaying the Complainant's THERMOMIX mark and reproducing photos and videos from the official website of VORWERK. The Respondent's website appears to have placed a small disclosure at the bottom of the page reading "TM6 Advisor Malaysia" and "This site is not an official site of Thermomix®".

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar if not identical to the Complainant's THERMOMIX mark. According to the Complainant, the addition in the disputed domain name of the term "2u" is a reference to "for you" and does not provide distinctiveness, instead copying the Vorwerk's trademark without adding any other additional elements. The Complainant asserts that the disputed domain name is fully reproduced in the Complainant's THERMOMIX mark.

The Complainant maintains that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant emphasizes that the disputed domain name expressly contains the Complainant's THERMOMIX mark, registered and in use well in advance of the date on which the Respondent initially registered the disputed domain name.

According to the Complainant, the Respondent lacks any affiliation with the Complainant, and is without authorization to use the THERMOMIX mark or to use copyright content owned by the Complainant. The Complainant contends that use of the disputed domain name to redirect Internet users to the Complainant's website cannot confer rights or legitimate interests in respect the disputed domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant asserts that the nature of the disputed domain name incorporating the Complainant's THERMOMIX mark with the addition of the number "2u" carries a risk of implied affiliation and cannot constitute fair use when it impersonates or suggests sponsorship or endorsement by the Complainant.

The Complainant asserts that a domain name which is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can of itself create presumption of bad faith. The Complainant further remarks that the disputed domain name, consisting of the Complainant's THERMOMIX mark with the addition of the number "2u", carries a risk of implied affiliation and cannot be considered a fair use if effectively impersonates or suggests sponsorship or endorsement by the Complainant.

According to the Complainant, and referring to the Respondent's redirection of the disputed domain name to the Complainant's website, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169 -177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Cancellation or transfer of the disputed domain name is the sole remedies provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the consensus view is that paragraph 4(c) of the Policy shifts the burden of production to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's THERMOMIX mark, in which the Complainant has established rights through registration and long use. In considering this

issue, the first element of the Policy acts essentially as a standing requirement.¹ The threshold inquiry under the first element of the Policy is largely framed in terms of whether the trademark and the disputed domain name, when directly compared, are confusingly similar. In this instance, the disputed domain name incorporates the Complainant's THERMOMIX mark, with the mere addition of the term "2u", and as such is confusingly similar to the Complainant's THERMOMIX mark. The Panel observes that Top-Level Domains ("TLDs") generally are disregarded when evaluating the identity or confusing similarity of the complainant's mark to the domain name under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.² Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.³ Accordingly, the disputed domain name is confusingly similar to the Complainant's THERMOMIX mark.

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

C. Rights or Legitimate Interests

Once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. The disputed domain name as previously noted is confusingly similar to the Complainant's THERMOMIX mark, but the Respondent has neither been authorized to use the Complainant's mark or otherwise commonly known by the disputed domain name.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if he has acquired no 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.

In the present case, the Respondent has used the disputed domain name to resolve to a website prominently displaying the Complainant's THERMOMIX mark and reproducing photos and videos from the official website of the Complainant, with a small disclaimer indicating that it is not the official site of the Complainant. The nature of the website suggesting an affiliation with the Complainant is not cured by the small disclaimer, which is likely to be overlooked, especially in the context of the similarities of the website to the Complainant's official website. Moreover, when Internet users go to purchase a product on the website at the disputed domain name they are automatically redirected to the Complainant's official website, presumably generating referral fees or some other benefit to the Respondent in the process and further reinforcing the suggestion of an affiliation with the Complainant. The Panel considers that such use is specifically intended to impersonate or falsely suggest an affiliation with the Complainant, probably for the commercial benefit of the Respondent via referral or other click through fees, and accordingly the Respondent has not been using the disputed domain name in connection with a *bona fide* offering of goods and services, nor a legitimate, noncommercial or fair use.

¹ See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

² See [WIPO Overview 3.0](#), section 1.11.

³ See [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Complainant has put forward a *prima facie* case, a case calling for an answer from the Respondent, that the Respondent lacks rights or legitimate interest in the disputed domain name, which has not been rebutted by the Respondent.

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

D. Registered or Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel concludes that the Complainant has met its burden of demonstrating bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. As previously observed, the Respondent registered the disputed domain name with the Complainant's trademark in mind and had been using it to intentionally attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark. The content of the Respondent's website, displaying photos and content from the Complainant's website, creates a likelihood of confusion as to the source or affiliation of the website and the mere existence of a small disclaimer at the bottom of the page cannot cure, in this case, that the Respondent intentionally registered the disputed domain name seeking to exploit and profit from the Complainant's rights (see [WIPO Overview 3.0](#), section 3.7).

Accordingly, and for the reasons discussed under this and the preceding heading, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <thermomix2u.com> be transferred to the Complainant.

/William R. Towns/

William R. Towns

Sole Panelist

Date: October 24, 2022