

## **ADMINISTRATIVE PANEL DECISION**

Thorlabs, Inc. v. raz B  
Case No. D2022-4021

### **1. The Parties**

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

The Respondent is raz B, France.

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

The disputed domain name <thorlebs.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 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 October 31, 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 November 1, 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 November 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on December 2, 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 inventor and manufacturer of high-quality retail and scientific equipment.

The Complaint is based, amongst others, on US trademark registration for THORLABS (verbal) no 3,170,691 registered on November 14, 2006 for goods in classes 9, 10 and first use in commerce since January 1, 1986. This mark has duly been renewed and is in force.

The disputed domain name was registered on July 22, 2022.

It results from the Complainant's documented allegations that the disputed domain name does not resolve to any active website ("Hmmm...can't reach this page"). It finally results from the Complainant's undisputed evidence that it contacted the Registrar twice with a takedown request, respectively on August 4 and 15, 2022, but never received any substantial reply.

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

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

Firstly, the Complainant points out that the disputed domain name is confusingly similar to its prior trademarks THORLABS, since both words only diverge by one letter so that the average consumer will be confused.

Secondly, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Respondent is not making legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. It is evident to the Complainant that the disputed domain name's sole purpose is to defraud the public and to trade on the Complainant's good will. In the Complainant's view, the disputed domain name can only be used for the purpose of intentionally attracting for commercial gain, Internet users to a website under this domain name by creating a likelihood of confusion with the Complainant's mark as the source or affiliation with the Complainant.

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

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

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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 Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and subsequently establish that the disputed domain name is identical or confusingly similar to said mark.

The Complainant is the registered owner US trademark registration for THORLABS (verbal) no 3,170,691 registered on November 14, 2006. This mark has duly been renewed and is in force.

The disputed domain name almost identically reproduces said trademark. The only difference is that the disputed domain name replaces the “A” in the trademark THORLABS by an “E”. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, in cases where a domain name incorporates the entirety of a trademark, or at least where a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing. In the case at hand, the Panel finds that the Complainant’s THORLABS-mark is readily recognizable within the disputed domain name since the single-letter difference (“A” to “E”) does not avoid a confusing similarity between the disputed domain name, in particular not when taking into account that the pronunciation of both vowels “A” and “E” is almost identical.

Moreover, the Panel considers the disputed domain name a typical case of “typosquatting”, which occurs when one letter is replaced by another in a domain name. According to the consensus view of UDRP Panels, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The generic Top Level Domain gTLD “.com” may be disregarded, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark THORLABS pursuant to the Policy, paragraph 4(a)(i).

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

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests in the disputed domain name. In the Panel’s view, based on the unrebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

No content is displayed on the website to which the disputed domain name resolves. Such non-use can neither be considered a *bona fide* offering of goods or services nor 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 sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co.Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#)).

In addition, the disputed domain name almost entirely reproduces the Complainant's trademark THORLABS. The only difference is that the disputed domain name replaces the "A" in the trademark THORLABS by an "E". Therefore, this Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's registered trademark THORLABS by registering a domain name consisting of said trademark in almost identical form.

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

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

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's undisputed allegations, the Respondent does not actively use the disputed domain name. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co. Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#) with further references). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include (see [WIPO Overview 3.0](#), section 3.3):

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;
- (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put.

In the case at hand, the Panel finds that the circumstances listed hereinafter and surrounding the registration suggest that the Respondent was aware that he has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the mail courier's inability to deliver the Center's written communications;
- (ii) the Respondent's failure to reply to the communications sent to the Registrar and to respond to the Complaint;
- (iii) the distinctiveness of the trademark THORLABS which has existed and been used in commerce since many years; and
- (iv) the trademark THORLABS is almost identically incorporated in the disputed domain name.

Due to the above circumstances this Panel concludes that the Respondent knew or should have known the trademark THORLABS when it registered the disputed domain name, and that there is no plausible legitimate active use that the Respondent could make of the disputed domain name.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant is therefore deemed to also have satisfied the third element, 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 <thorlebs.com> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: December 14, 2022