

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. George Ring, DN Capital Inc.
Case No. D2022-4235

1. The Parties

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

The Respondent is George Ring, DN Capital Inc., Panama.

2. The Domain Name and Registrar

The disputed domain name <mythermomixshop.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 November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 November 9, 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 21, 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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2022.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on December 21, 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 that has been in business for over 130 years and has around 578,000 independent sales partners plus around 12,000 employees worldwide. Thermomix is a business division of the Complainant, represented with its own subsidiaries in a total of 16 countries in Europe, Asia, and North America. In addition, more than 30 distributors are engaged in selling the multifunctional kitchen appliance. In 2020, Thermomix generated EUR 1,584 million in sales and had an average of 59,900 self-employed sales advisors and 5,900 employees working for Thermomix.

With respect to the trademarks THERMOMIX, through the use of the Complainant, they have gained distinctiveness and character. The consuming public identifies the Complainant and its products with the famous and notorious mark THERMOMIX. The Complainant owns trademark registrations for the THERMOMIX mark in multiple jurisdictions, for example, United States of America Trademark Registration No. 4762314 (registered on June 30, 2015), and International Trademark Registration No. 1188472 (registered on September 6, 2013). The Complainant is the owner of more than 1,500 domain names that cover all types of Top-Level Domains (“TLDs”), out of which 400 expressly contain the trademark THERMOMIX.

The disputed domain name was registered on May 30, 2020, and resolves to a parking page displaying Pay-Per-Click (“PPC”) links. The disputed domain name is also offered for sale for a price of USD 3,277.

5. Parties’ Contentions

A. Complainant

By the Complaint, the Complainant contends that:

- There is an undeniable phonetic and graphic identity between the disputed domain name and the Complainant’s trademark, THERMOMIX, that can be clearly substantiated by a simple comparison between them. The Respondent does not provide any distinctiveness to demonstrate that the disputed domain name constitutes an independent website of the Complainant.
- The disputed domain name entirely incorporates the trademark THERMOMIX, differing only by the addition of the suggestive terms “my” and “shop”, which is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark. Such change in itself does not perturb the overall impression of the designation as being connected to the Complainant’s trademark THERMOMIX.
- Also, the addition of the generic Top-Level Domain (“gTLD”) (“.com”) should be disregarded, as it does not impact on the analysis of whether the disputed domain name is identical or confusingly similar to the Complainant’s trademarks.
- The Respondent does not have rights or legitimate interests regarding the disputed domain name, as already shown above, the Complainant owns many THERMOMIX trademarks around the world and owns more than 1,500 domain names that cover all types of TLDs, highlighting the fact that, more than 400 expressly contain the Complainant’s trademark THERMOMIX, all registrations being duly granted well in advance of the date of registration of the disputed domain name. The Respondent knew or should have known of the Complainant’s exclusive rights in the THERMOMIX mark prior to registering the disputed domain name.
- The Respondent has no known connection to the Complainant, nor has it received authorization or license of any kind to resell or use such trademark or include it in any domain name.
- It is well-established under the Policy that registering a domain name and doing no more with it than to advertise that it is for sale, does not support a respondent’s rights or legitimate interests under the

Policy. The fact that the Respondent is also using the disputed domain name in order to resolve to a webpage containing PPC links, in addition to offering it for sale on a third party website, does not in these circumstances give rise to rights or legitimate interests on the part of the Respondent in the disputed domain name.

- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a *bona fide* offering of goods or services. Rather, the disputed domain name resolves to a parking page including PPC links to third parties' websites. The fact that the links on the Respondent's webpage have no obvious connection with the Complainant is insufficient for the Respondent's activities to comprise a *bona fide* offering of goods and services because the Respondent has been using the repute of the Complainant's mark and the confusing similarity to it of the disputed domain name in order to attract Internet users to its webpage, and thereby derive a commercial benefit from it, without the Complainant's consent. The distinctive character and reputation of the Complainant's THERMOMIX mark is such that any use of the disputed domain name by the Respondent which capitalizes on the repute of the Complainant's mark cannot amount to use in connection with a *bona fide* offering of goods or services.
- The disputed domain name is used for commercial purposes and carries a risk of implied affiliation, as the Respondent is free riding on the Complainant's reputation and goodwill to mislead unsuspecting Internet users to the webpage associated with the disputed domain name.
- The disputed domain name has been registered and used in bad faith.
- The Respondent either knew or should have known of the Complainant's THERMOMIX mark when registering the disputed domain names or have exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". The mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith and indicates that registration was deliberate for its substantial similarity with, and with the likely intention to benefit from the reputation and goodwill of the Complainant's name and trademark, which denotes further bad faith.
- The disputed domain name is advertised for sale at a price of USD 3,277. This sum will likely be well in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. The only likely potential buyers are the Complainant or one of its competitors. The offering for sale of the disputed domain name therefore amounts to bad faith registration and use within the circumstance described at paragraph 4(b)(i) of the Policy.
- Furthermore, the use of the confusingly similar disputed domain name to resolve to PPC links constitutes bad faith within the context of paragraph 4(b)(iv) of the Policy.
- In addition, the Respondent concealed its identity through the use of a privacy service which is indicative of the Respondent's bad faith given that the disputed domain name is confusingly similar to the Complainant's THERMOMIX trademark and the other indicia of bad faith.

B. Respondent

Although the Complaint has been properly notified to the Respondent, the Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

First, this Panel finds that the Complainant has established trademark rights in the THERMOMIX trademark.

Second, under this element, this Panel notes that it has been decided by previous UDRP panels that incorporating a trademark in its entirety can be sufficient to establish that a domain name is identical or confusingly similar to that trademark, according to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The disputed domain name incorporates the Complainant's THERMOMIX trademark as a whole and adds the terms "my" and "shop", which does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's trademark because the Complainant's trademark THERMOMIX remains easily recognizable in the disputed domain name. As stated at [WIPO Overview 3.0](#), section 1.8., 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.

Consequently, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, in which the Complainant has rights, and as such the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

To establish the second element of the Policy, based on the UDRP practice, the Complainant has to show that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes a *prima facie* showing, the burden of production shifts to the Respondent, with the overall burden of proof always remaining on the Complainant. See in this sense, section 2.1 of the [WIPO Overview 3.0](#).

Considering the Complainant's contentions, it is the opinion of this Panel that the Complainant has made a strong *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. It has not been refuted by the Respondent that it knew or should have known of the Complainant's rights in the THERMOMIX mark prior to registering the disputed domain name. The Respondent has no obvious connection to the Complainant, nor has it received authorization or license of any kind to use the Complainant's trademark or to include it in any domain name.

It is well established under the Policy that registering a domain name that is confusingly similar to a complainant's trademark and doing no more with it than to advertise it for sale cannot support a respondent's rights or legitimate interests in the domain name under the Policy. Further, considering that the Respondent is also using the disputed domain name in order to resolve to a webpage containing PPC links, in addition to offering it for sale on a third party website, this Panel finds that all such surrounding circumstances support a finding for lack of rights or legitimate interests on the part of the Respondent in the disputed domain name.

Consequently, not being able to identify any grounds for rights or legitimate interests by the Respondent of the disputed domain name, it is the opinion of this Panel that the Complainant has sufficiently demonstrated, without the same being rebutted, that the Respondent lacks any rights or legitimate interests in the disputed domain name. This Panel finds that the second element of the paragraph 4(a) of the Policy is therefore established.

C. Registered and Used in Bad Faith

Under the Policy, paragraph 4(b), bad faith may be evidenced by a number of circumstances including, but not limited to: circumstances indicating that the respondent has registered or acquired the domain name

primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name and the use of the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location.

This Panel considers the circumstances and evidences documenting such circumstances presented in the Complaint as demonstrative of the bad faith of the Respondent in registering and using the disputed domain name pursuant to paragraphs 4(b)(i) and (iv) of the Policy. Such circumstances refer to the following facts documented by the Complainant as committed by the Respondent:

- The distinctiveness and reputation of the Complainant's THERMOMIX mark is such that any use of the disputed domain name by the Respondent which capitalizes on the repute of the Complainant's mark cannot amount to use in connection with a *bona fide* offering of goods or services.
- The disputed domain name is used for commercial purposes and carries a risk of implied affiliation, as the Respondent is free riding on the Complainant's reputation and goodwill to mislead unsuspecting Internet users into believing that the webpage associated with the disputed domain name is somehow connected with the Complainant.
- The Respondent either knew or should have known of the Complainant's THERMOMIX mark when registering the disputed domain names or have exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith".
- The mere registration of a domain name that is identical or confusingly similar to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).
- The disputed domain name is advertised for sale at a price of USD 3,277. This sum will likely be well in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name. The likely potential buyers are the Complainant or one of its competitors.
- The disputed domain name resolves to a website displaying PPC links which shows the Respondent's intention of using the disputed domain name that is confusingly similar to the Complainant's trademark for commercial gain.

Consequently, this Panel holds that the disputed domain name was registered and is being used in bad faith and that the third element of paragraph 4(a) of the Policy is also established.

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, <mythermomixshop.com>, be transferred to the Complainant.

/Dr. Beatrice Onica Jarka/

Dr. Beatrice Onica Jarka

Sole Panelist

Date: January 4, 2023