

ADMINISTRATIVE PANEL DECISION

Vorwerk International AG v. Name Redacted

Case No. D2023-1393

1. The Parties

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

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <thermo-mix.com> is registered with Cronon GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 30, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 2023, 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 (UNKNOWN (private)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 2023, 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 April 5, 2023.

On April 5, 2023, the Center sent an email to the Parties in both English and German regarding the language of the proceedings. On April 5, 2023, the Complainant requested that English be the language of the proceedings and provided arguments in support of its request. The Respondent did not provide any comments regarding the language of the proceedings.

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

¹ Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent's name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.

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 in English and in German of the Complaint, and the proceedings commenced on April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 4, 2023. The Respondent sent informal communications to the Center on May 5, May 11 and May 24, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on May 8, 2023. 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 German company subdivision of the Vorwerk Group (hereinafter "Vorwerk"), active, amongst others, in the manufacturing and distribution of household appliances. The Complainant claims to be active internationally in 16 countries and employing over 12,000 employees worldwide.

Amongst others, the Complainant owns several active verbal word trademarks, including:

- International verbal trademark THERMOMIX No. 1188472, 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
- German verbal trademark THERMOMIX No. 3020130300823, registered on July 17, 2013, in classes 7, 8, 9, 11, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 37 and 41.

The Complainant claims that it has extensively and widely promoted its products and services under its trademarks, which are thus well-known and duly exploited.

The Complainant claims to operate over 1500 domain names, amongst which 400 would contain the abovementioned trademarks, and its "official website" at <vorwerk.com>.

The disputed domain name was registered by the Respondent on September 27, 2022. At the time of filing of the Complaint, the disputed domain name resolves to a webpage displaying an exact copy of the official advertisement for a product of the Complainant taken from the Complainant's official website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-known THERMOMIX trademarks, as the disputed domain name fully incorporates the trademarks. Additionally, the addition of a hyphen in the middle of the trademark does not suffice to distinguish the disputed domain name from the Complainant's trademarks.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as the Respondent is not commonly known by the disputed domain name, does not use the disputed domain name for a *bona fide* offering of goods or services and does not make a noncommercial use or fair use of the disputed domain name. In addition, the Respondent has not acquired trademark rights in the disputed domain name and has not been authorized, licensed or otherwise permitted by the Complainant to use or register its trademarks, including as domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith as they intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's mark. Furthermore, the Complainant argues that the mere registration of a domain name identical or confusingly similar to its widely known trademark creates a presumption of bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Respondent sent multiple informal communications to the Center on May 5, May 11, and May 24, 2023.

Upon being notified of the expiry of the delay to submit a response, the Respondent wrote on May 5, 2023: "Ich verstehe nicht was Sie wollen? Was ist das Problem? leider kann ich kein Englisch und diese Nachricht in Deutsch ist sehr schlecht Übersetzt? Worum geht es denn?" – which translates to "I don't understand what you want? What is the problem? unfortunately I don't speak English and this message in German is very poorly translated? What is it about?"

The Center replied on May 8, 2023, with a renewed explanation of the contents of the Complaint.

On May 11, 2023, the Respondent then wrote: "Hallo, ich habe mit der Website nichts zu tun, ich habe meine eigene Homepage mein eigenen online shop. Ich vermute das es gehackt worden ist und durch Fremde gemacht worden ist" – which translates to "Hello, I have nothing to do with the website, I have my own homepage, my own online shop. I suspect it was hacked and made by strangers".

On May 24, 2023, the Respondent added: "Ich habe diese Domains gekündigt. Es wurde gehackt daher habe ich es jetzt gekündigt alle meine Passwörter wurden gehackt ich kann es ihnen Beweisen" – which translates to "I cancelled these domains. It was hacked so I cancelled it now all my passwords were hacked I can prove it to you"

6. Discussion and Findings

6.1 Preliminary Matter: Language of proceedings

The language of the disputed domain name registration agreement is German. The Complainant has submitted a request that the proceedings be conducted in English.

In accordance with paragraph 11 of the Rules, unless the parties agree otherwise, the default language of the proceeding is the language of the registration agreement, subject to the authority of the Panel to decide otherwise.

In view of the objective of conducting the proceeding expeditiously, paragraph 10 of the Rules empowers the Panel to conduct the proceeding in such manner as it deems appropriate, while ensuring that the parties are treated equally and that each party has a fair opportunity to present its case.

For these purposes, the Panel may consider a variety of indicators such as (i) evidence that the Respondent understands the language of the Complaint, (ii) the language/script of the domain name, particularly where it is the same as the Complainant's trademark, (iii) any content of the web page under the disputed domain name (iv) potential unfairness or undue delay in ordering the Complainant to translate the Complaint, or (v) other indications that it would not be unfair to proceed in a language other than that of the registration agreement (WIPO Summary of Panel Views on Selected Policy Issues, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.5.1 and 4.5.2).

The Complainant argues that;

- a) The Complainant and its attorneys are not established in Germany and are unable to communicate in German.
- b) The translation into another language would cause undue delay, considerable expense, unfair disadvantage and burden the Complainant as well as judgment of this matter.
- c) English is the primary language for international relations.
- d) The [generic Top-Level Domain] gTLD of the disputed domain name is “.com”, so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries;
- e) The Panel is proficient in both English and German, capable of reviewing all the documents and materials in both languages and giving full consideration to the Parties’ respective arguments.”

In his informal responses, the Respondent stated that “unfortunately I don’t speak English and this message in German is poorly translated”. He further indicated that he was completely unaware of the existence and content of the proceedings.

The Panel finds that all communications to the Respondent from the Center, starting with the email of April 13, 2023, are translated correctly into German and sufficient for any recipient speaking German to understand. The Panel further notes that the Respondent has not responded to any emails of the Center prior to the email of May 4, 2023, which indicated that the delay to submit a response had expired.

The Panel considers that ample opportunity was given to the Respondent to provide a response, including in German. The Panel finds that the Respondent has submitted an informal communication denying any involvement and/or association with the disputed domain name – placing the blame on unidentified third-party hackers.

In this case, the Panel considers that both Parties were given a fair opportunity to present their case, that it would be contrary to the objective of expeditious proceedings and that requiring translation of documents would place an unfair burden on the Complainant. In this context, the Panel finds that the change of language from German to English is fair.

Having considered all the matters above, the Panel determines that the language of the proceeding shall be English.

6.2 Substantive Matters

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must demonstrate that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

On the basis of the evidence presented, it is established that the Complainant owns several THERMOMIX trademarks.

The disputed domain name reproduces the Complainant’s THERMOMIX trademarks, albeit with the addition of a hyphen. Previous UDRP panels have consistently held that, in circumstances where the disputed domain name incorporates the entirety of a trademark or its dominant feature is recognizable, the disputed domain name will be considered confusingly similar to the trademark ([WIPO Overview 3.0](#), section 1.7; *Fondation Le Corbusier v. Monsieur Bernard Weber, Madame Heidi Weber*, WIPO Case No. [D2003-0251](#); and *Bayerische Motoren Werke AG (“BMW”) v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#)).

This finding of confusing similarity is not precluded by the addition of other terms ([WIPO Overview 3.0](#), section 1.8; *Intesa Sanpaolo S.p.A. v. Rampe Purda*, WIPO Case No. [D2010-1116](#); and *Société des Bains de Mer et du Cercle des Etrangers à Monaco v. Mark Bolet*, WIPO Case No. [D2006-1245](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's THERMOMIX trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, evidence of the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) may be established, in particular, by any of the following circumstances:

- (i) prior to becoming aware of the dispute, the Respondent has used 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 made serious preparations to do so;
- (ii) the Respondent is known by the disputed domain name in question, even without 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 to divert consumers for profit by creating confusion or to tarnish the trademark or service mark at issue.

Where the Complainant establishes *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production on this element is on the Respondent and it is up to the Respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does not provide such relevant evidence, the Complainant is deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant establishes *prima facie* that the Respondent has no rights on THERMOMIX as a trademark and that "the Respondent has no known connection to the Complainant, nor have it received authorization or license of any kind to resell or use such trademark or include it in any domain name".

The Complainant also establishes *prima facie* that 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. Instead, the disputed domain name displays promotional advertisements of the Complainant's THERMOMIX products.

In addition, noting the high risk of implied affiliation between the disputed domain name and the confusingly similar well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not effectively impersonates or suggests sponsorship or endorsement by the Complainant.

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not formally exercised its right to defend itself and has not asserted the existence of a legitimate use of the disputed domain name, so the Panel finds that the second condition of paragraph (4)(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides circumstances, in particular but without limitation, that shall be evidence of a disputed domain name being registered and in bad faith.

In addition to the circumstances provided in paragraph 4(b) of the Policy, the Panel may also consider

special circumstances such as (i) the nature of the domain name (e.g., a typo of a widely known mark, or a domain name incorporating the applicant's mark plus an additional term such as a descriptive or geographic term), (ii) a clear lack of rights or legitimate interests coupled with the absence of a credible explanation for the respondent's choice of domain name, or (iii) other *indicia* generally suggesting that the respondent has targeted the complainant in some way ([WIPO Overview 3.0](#), section 3.2.1).

On the basis of this provision, previous UDRP panels have already held on several occasions that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith, as the respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's trademark ([WIPO Overview 3.0](#), section 3.2.2).

The disputed domain name was registered on September 27, 2022, which is subsequent to the registration of the Complainant's THERMOMIX trademarks in 2013.

The Complainant provides evidence that the disputed domain name resolves to a webpage displaying an exact copy of the official advertisement for a product of the Complainant taken from the Complainant's official website. The text of the promotional message itself also includes the "®" symbol, thus precluding any argument of lack of knowledge of the protected nature of the term "thermomix".

In these circumstances, the Panel finds that, by using the disputed domain name, the Respondent has necessarily attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of their websites or of a product on their websites.

In the presence of other relevant circumstances such as (i) the provision of false Registrant information, and (ii) the use of a privacy service, the Panel considers that these elements further reinforce a finding of bad faith ([WIPO Overview 3.0](#), section 3.3).

For the reasons set out above, the Panel considers that the requirement of registration and use in bad faith of the disputed domain name set out in paragraph 4(a)(iii) of the Policy is satisfied.

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-mix.com> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: May 22, 2023