

## ADMINISTRATIVE PANEL DECISION

BSH Hausgeräte GmbH v. Alekseyi Kirillov  
Case No. D2024-3824

### 1. The Parties

Complainant is BSH Hausgeräte GmbH, Germany, represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Alekseyi Kirillov, Uzbekistan.

### 2. The Domain Name and Registrar

The disputed domain name <thermadorapplianceparts.com> is registered with GoDaddy.com, LLC (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 19, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on September 24, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 25, 2024.

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 Respondent of the Complaint, and the proceedings commenced on October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 26, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on November 1, 2024. 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**

Complainant was founded in Germany in 1967 as a joint venture of Robert Bosch GmbH, and Siemens AG. Thermador is part of BSH Home Appliances Corporation, a wholly owned subsidiary of Complainant. Complainant manufactures and sells THERMADOR branded kitchen appliances in countries around the world. Complainant operates its primary commercial website at the domain name <thermador.com>, and it owns a substantial number of registrations for other Thermador-formative domain names. Complainant's THERMADOR brand is well known by consumers in the kitchen appliance market.

Complainant or its subsidiary BSH Home Appliances Corporation is owner of trademark registrations for the word trademark THERMADOR in various jurisdictions. These include registration at the United Kingdom Intellectual Property Office (UKIPO), registration number UK00001245429, registration dated July 5, 1985, in international class ("IC") 7; at the German Patent and Trademark Office (DPMA), registration number 39927723, registration dated June 4, 1999, in IC 11, covering household and kitchen appliances, as further specified, and; International Registration under the Madrid System, registration number 722720, registration dated August 3, 1999, in ICs 7, 9 and 11, covering various household appliances, as further specified.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to that verification, the disputed domain name was initially registered on November 17, 2009. There is no indication on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its initial creation date.

There is no evidence of use by Respondent of the disputed domain name in connection with an active website. Complainant has provided evidence that Respondent may have enabled email service as there is a mail exchange (MX) record, but there is no evidence that Respondent has used the disputed domain name in connection with the sending or receiving of email messages.

There is no evidence on the record of this proceeding that Complainant and Respondent are associated with each other in any way, commercial or otherwise.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it owns rights in the trademark THERMADOR and that the disputed domain name is confusingly similar to that trademark.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent is not sponsored by or affiliated with Complainant in any way; (2) Complainant has not authorized Respondent to use its trademarks in any manner, including in domain names; (3) Respondent is not commonly known by the disputed domain name; (4) Respondent has engaged a privacy service; (5) the disputed domain name resolves to a blank web page; and (6) Respondent registered the disputed domain name substantially after Complainant's filing for registration of its trademark and use of the mark in commerce.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Complainant's trademark is well known; (2) Respondent has incorporated the entirety of Complainant's trademark in the disputed domain name; (3) Respondent must have known of Complainant's trademark when it registered the disputed domain name; (4) Respondent is passively holding the disputed domain name; (5) Respondent set up the disputed domain name with an MX record although it could not use an email emanating from the disputed domain name for any good faith purpose; (6) Respondent's use of the disputed domain name in connection with an inactive website can amount to bad faith, and the disputed domain name could create Internet users' confusion; (7) Respondent employed a privacy shield; (8) laches does not bar this action by Complainant; and (9) the totality of the circumstances indicates that Respondent targeted Complainant's trademark when it registered the disputed domain name.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery to the physical address provided by Respondent in its record of registration could not be completed because of inaccurate and inadequate address information provided in the record of registration. There is no indication of difficulties in email transmission to Respondent's address provided in the record of registration. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

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

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "appliance" and "parts", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant, as here, makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent, as here, fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence of any use or contemplated use by Respondent of the disputed domain name that might reasonably establish rights or legitimate interests. There is no evidence that Respondent has been commonly known by the disputed domain name, nor has Respondent established rights in the term “thermador”.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent was almost certainly aware of Complainant’s trademark when it registered the disputed domain name as Complainant’s trademark is a distinctive term and Complainant’s appliance branding was established when the disputed domain name was registered.

Although the disputed domain name was registered in 2009, the doctrine of laches does not preclude the successful pursuit of a claim for abuse of domain name registration and use in circumstances such as those here ([WIPO Overview 3.0](#), section 4.17).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether Respondent’s registration and use of the disputed domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Although the disputed domain name has not been used in connection with an active website, the disputed domain name incorporates Complainant's THERMADOR trademark in full, adding the terms "appliance" and "parts". The added terms are ones that Internet users would expect to be associated with a website operated, controlled by or affiliated with Complainant. This suggests that while it has not yet done so, Respondent may well have contemplated selling the disputed domain name to Complainant or a third party when it registered the name. Respondent may have contemplated creating a website that would have sold or offered appliance parts in a way that suggested they would be supplied by Complainant. There are no apparent uses for the disputed domain name by Respondent that would have been legitimate within the meaning of the Policy, and Respondent has not attempted to justify its registration and use. Finally, while there is no evidence that Respondent has used the disputed domain name in connection with the transmission or receipt of email,<sup>1</sup> in light of the proliferation of cases involving use of domain names confusingly similar to those of well-known brands for purposes of engaging in deceptive activity, the Panel takes a precautionary approach in cases such as this where there is no apparent potential good faith use of the disputed domain name.

Given the absence of potential good faith use of the disputed domain name by Respondent, and the targeting of Complainant's distinctive trademark, the Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraphs 4(b) of the Policy, and other contextual indicia of bad faith.

The Panel finds that Complainant has established the third element 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 <thermadorapplianceparts.com> be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: November 15, 2024

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<sup>1</sup> The Panel does not infer from the presence of an MX record that Respondent contemplated a scheme to defraud through email since some registrars commonly create MX records when a domain name is registered. The presence of an MX record standing alone does not in the Panel's view constitute evidence of bad faith intent.