

## **ADMINISTRATIVE PANEL DECISION**

Vorwerk International AG v. Alaa Mouttaqui  
Case No. DCO2022-0079

### **1. The Parties**

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

The Respondent is Alaa Mouttaqui, Germany.

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

The disputed domain name <thermomixers.co> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 October 7, 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 October 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022. The Respondent did not submit any response. On November 1, 2022 and November 4, 2022 respectively, the Center received two emails from two unidentified senders. On November 7, 2022, the Center notified the Parties that it would proceed with the panel appointment.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 11, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is member of a large international group of companies with a 130- year history. One of its business divisions is engaged in direct selling operations in 70 countries, having subsidiaries in a total of 16 countries in Europe, Asia and North America, and more than 30 distributors for multifunctional kitchen appliance under the trademark THERMOMIX.

The Complainant is the exclusive owner of a number of registered trademarks consisting of or including THERMOMIX, including the International trademark registration No. 1188472 for THERMOMIX registered on September 6, 2013.

The disputed domain name was registered on July 7, 2022 and it resolves to a website reproducing without authorization original photos and videos taken from the official website of the Complainant and supposedly selling counterfeit products.

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

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

The Complainant argues that the disputed domain name fully reproduces its trademark THERMOMIX, the only difference is the addition of the suffix "ers", which can be seen either as making a plural or as a typographical-type error, neither of these precluding a finding of confusing similarity. The country-code designates Colombia, but it is also a common abbreviation for the term "company" and its inclusion in the disputed domain name adds significantly to the similarity between the disputed domain name and the Complainant's trademark.

As regards the second element, the Complainant argues that the Respondent does not have rights or legitimate interests regarding the disputed domain name as the Respondent has never been an official distributor and 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, as well as to use/reproduce of the copyrighted content also owned by the Complainant. The use by the Respondent of a domain name that is confusingly similar to the Complainant's trademarks in order to attract Internet users looking for genuine products and to offer them suspicious unauthorized copies instead is a strategy that lacks *bona fide* and does not give rise to rights or legitimate interests under the Policy.

With respect to the third element, the Complainant argues that the Respondent was aware of the trademarks of the Complainant, especially considering it sells presumably counterfeit products. The Respondent has registered the disputed domain name for undue profit to sell suspicious products causing an implicit risk of confusion by association, intentionally trying to attract Internet users to its website for profit, creating the possibility of confusion with the Complainant's trademark. The Complainant also contends that the Respondent had registered a similar domain name that was object of another UDRP proceeding where the panel has ordered the transfer of that domain name to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. The Center received emails from a third parties claiming that they were victim of the abusive use of its company and personal address.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

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

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

Here, the Complainant argued that it is the owner of various trademark registrations included in a list with details of registration of the THERMOMIX trademark in various countries. No actual evidence of such trademark registrations was provided; however, the Panel verified that the Complainant owned valid and existing registrations for the THERMOMIX trademark (according to section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "a panel may undertake limited factual research into matters of public record, including "accessing trademark registration databases".) Thus, the evidence submitted by the Complainant, as confirmed by the Panel, is sufficient to establish valid trademark rights for the purposes of this UDRP proceeding.

The trademark THERMOMIX is reproduced in its entirety in the disputed domain name. The addition of "ers" does not prevent a finding of confusing similarity with the Complainant's trademark THERMOMIX, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a country-code Top-Level Domain ("ccTLD"), such as ".co", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark THERMOMIX and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is mimicking the Complainant's official website and allegedly offering for sale the Complainant's products. It does not make it clear that there is no commercial connection with the Complainant. In the Panel's view, such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of the Respondent within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must 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.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant's trademark and purportedly offering for sale the Complainant's products but at a lower price. Given the distinctiveness and renown of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

By registering and using the disputed domain name to resolve to a website mimicking the Complainant's official web page, the Respondent has intentionally attempted to attract, for commercial gain, Internet users, by creating a likelihood of confusion with the Complainant's trademark.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the unrebutted evidence in the case file shows that the Respondent was involved in other UDRP proceeding where similar factual situations caused the concerned UDRP panels to decide in favor of the Complainant (see *Vorwerk International AG v. Privacy Services provided by Withheld for Privacy ehf / Alaa Mouttaqui*, WIPO Case No. [D2022-2324](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "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 you have engaged in a pattern of such conduct".

Furthermore, it appears that the Respondent has provided fake contact details, which also contributes to the bad faith finding.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

## 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 <thermomixers.co> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: November 25, 2022