Decision for dispute CAC-UDRP-101946

Case number	CAC-UDRP-101946
Time of filing	2021-01-26 09:12:52
Domain names	microsoftlivehelp.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Microsoft Corporation

Complainant representative

Organization	Convey srl

Respondent

Organization	Whois Privacy Corp.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proven to be the owner of the MICROSOFT marks.

The Complainant is, inter alia, the owner of the following trademarks:

- International trademark registration no. 1318242 “MICROSOFT”, registered on May 27, 2016;
- International trademark registration no. 1142097 “MICROSOFT” device, registered on August 22, 2012;
- EUTM registration no. 000330910 “MICROSOFT”, registered on May 7, 1999;
- EUTM registration no. 000479956 “MICROSOFT”, registered on March 25.

FACTUAL BACKGROUND

The Complainant, Microsoft Corporation, was founded on April 4, 1975. It develops, manufactures, licenses, supports, and sells computer software, consumer electronics, personal computers and related services. Today, Microsoft is amongst the leading players in the world hi-tech, with about 120 subsidiaries and 160,000 employees worldwide. In 2020, revenues were almost USD 143,000 million and it was ranked 21st in the 2020 Fortune 500 rankings of the largest United States

corporations by total revenue.

Microsoft is considered one of the “Big Five” companies in the U.S. information technology industry, along with Google, Apple, Amazon and Facebook; according to the Forbes annual ranking of the 100 most valuable brands, in 2020 it was ranked in third position.

The trademark “MICROSOFT” is distinctive and well known all around the world.

The disputed domain name was registered on February 3, 2020, and points to a website providing support services to internet users for computer-related issues.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to the Complainant’s registered trademark; that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant’s claims for each point are here below reported:
(1) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The disputed domain name <microsoftlivehelp.com> reproduces the Complainant's MICROSOFT trademark in its entirety with the sole addition of the generic terms “live” and “help”, thus the Complainant’s MICROSOFT trademark is undoubtedly recognizable within the disputed domain name, and the addition of the descriptive terms “live help”, which could refer to the IT sector in which the Complainant operates, does not prevent a finding of confusing similarity under the first element.

The Complainant concludes that the disputed domain name is confusingly similar to the prior registered trademark in which the Complainant has rights in satisfaction of paragraph 4(a)(i) of the Policy.

(2) The Respondent has no rights or legitimate interests in respect of the domain name

The Respondent is not a licensee or authorized agent of the Complainant and is not in any other way authorized to use Complainant’s trademarks. Specifically, the Respondent is not an authorized reseller of the Complainant’s products and has not been authorized to register and use the disputed domain name.

Upon information and belief, the Respondent is not commonly known by the disputed domain name as an individual, a business or other organization, and his family name does not correspond to MICROSOFT or the disputed domain name.

The Respondent has not provided the Complainant with any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute.

The Respondent is intentionally attempting to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion: an internet user could reasonably – and wrongly – assume that the website is sponsored by, affiliated with, or otherwise approved by the legitimate rights owner, namely the Complainant.

The Respondent attempts to pass himself off as the Complainant in order to exploit the notoriety and fame of the Complainant. Indeed, the Respondent has created a website that is confusingly similar to the Complainant’s website with respect to the whole layout (for instance the blue color used), where only the Complainant’s trademarks are indicated and the Respondent reproduces as the website’s favicon a logo confusingly similar to the Complainant’s logo.

The Respondent's look-alike website is aimed at confusing the customers about the ownership of the disputed domain name, which means that Internet users, on redirecting to the website at issue, might form the immediate impression that they are actually visiting an official website of the Complainant or one of an authorized company, instead of a website operated by a third party with no authorization to register and use the Complainant's trademarks.

The mere registration of a domain name does not establish rights or legitimate interests in a disputed domain name.

The Respondent's registration and use of the disputed domain name to profit from Internet user confusion is evidence of bad faith registration and use pursuant to Policy paragraph 4(b)(iv).

For all of the foregoing reasons, the Complainant concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

(3) Holder of the disputed domain name registers and uses the disputed domain name in bad faith

By virtue of its extensive worldwide use, the Complainant's trademark MICROSOFT has become a well-known trademark in the IT sector, as also indicated in many UDRP decisions, and it is therefore not possible that the Respondent was unaware of the famous MICROSOFT mark at the time it registered the disputed domain name.

Furthermore, the knowledge of the MICROSOFT trademark by the Respondent at the time of the registration of the disputed domain name is demonstrated by the fact that the Respondent provides support services for the Complainant's products and that the Respondent reproduces the Complainant's trademarks on the website hosted at the disputed domain name.

With regards to the use in bad faith, the disputed domain name resolves to a website where the Complainant's trademarks are misappropriated without the authorization, approval, or license of the Complainant, in an attempt to pass itself off as the Complainant's website, and where the Respondent provides assistance to internet users for "Microsoft products and third party applications".

The Respondent has created a website, confusingly similar to the Complainant's website in terms of the whole layout, where only the Complainant's trademarks are indicated, and for the favicon of the website the Respondent reproduces a logo confusingly similar to the Complainant's trademark: a square with four small squares reproducing the same colors as those of the Complainant. Therefore, internet users, on visiting the website at issue, might think that they are actually visiting an official Complainant's website or the one of an authorized company instead of a website operated by a third party with no authorization to register and use the Complainant's trademarks.

The Respondent is disrupting the Complainant's business and unfairly competing with the Complainant.

The Respondent is intentionally attempting to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his web site or other on-line location or of a product or service on his web site or other on-line location.

The Complainant's representative has sent a cease and desist letter to the email indicated in the WhoIs entry for the disputed domain name and to the email address listed on the website, but the Respondent did not deign to answer. Furthermore, the Complainant's representative has received a delivery failure for the email indicated on the website.

In light of the above, the Complainant concluded that the disputed domain name was registered and is being used in bad faith in full satisfaction of paragraphs 4(a)(iii) and 4(b) of the Policy.

RESPONDENT:

In his very short response the Respondent asserts that:

- he has clearly mentioned “on the website Main page Footer and about pages” that they are an independent online repair store;
- <microsoftlivesupport.com> is his friend’s website which has been online since 2014 and has had no issues to the present day.
The Respondent goes on to ask what the procedure is to continue his independent online service support.

The Respondent sent an unsolicited email on February 15, 2021. This email and the related contents is however not taken into consideration for the reasons explained under the Procedural Factors paragraph.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Respondent, after the term for his response expired and the Panel had already been appointed, sent an unsolicited email on February 15, 2021.

According to paragraph 10 of the UDRP Rules, the panel has the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. Previous panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why the party was unable to provide the information contained therein in its complaint or response (e.g. owing to some “exceptional” circumstance).

The Panel does not see any “exceptional” circumstances that would give grounds for accepting the Respondent’s supplemental filings. In fact, the information therein provided was already available when the Response was filed, and in any case would not have altered the findings in this case. In addition, to accept these filings arrived days after the Panel’s appointment would greatly delay the proceedings. Consequently, the Panel is not taking these filings into account.

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”
Paragraph 4(a) of the Policy lists three elements that Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

1) the domain name is identical or confusingly similar to a trademark or service mark (“mark”) in which the Complainant has rights; and
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the MICROSOFT registered trademark.
The disputed domain name <microsoftlivehelp.com> reproduces the Complainant's MICROSOFT trademark in its entirety with the addition of the generic terms “live” and “help”.
The Panel agrees with the Complainant’s assertion that the addition of these descriptive terms, which could refer to the IT sector where the Complainant operates, does not prevent a finding of confusing similarity under the first element.
The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

B. Rights or Legitimate Interests

Complainant must show that Respondent has no rights or legitimate interests in respect of the disputed domain name.
Respondent in a UDRP proceeding does not assume the burden of proof, but may establish a right or legitimate interest in a disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy:
a) that before any notice to the respondent of the dispute, he or she used or made preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
b) that the respondent is commonly known by the domain name, even if he or she has not acquired any trademark rights; or
c) that the respondent is making a legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Respondent has no connection or affiliation with Complainant, which has not licensed or otherwise authorized the Respondent to use or apply for any domain name incorporating the Complainant’s trademark. The Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. On the contrary it appears that the Respondent has registered and used the disputed domain name to mislead internet consumers for its own commercial gain. In addition, the Respondent has failed to argue, still less show, any facts or elements to justify prior rights and/or legitimate interests in the disputed domain name in accordance with the UDRP Policy.

Accordingly, the Panel finds that Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:
i) circumstances indicating that the holder has registered or has 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 the holder’s documented out-of-pocket costs directly related to the domain name; or
ii) the holder has registered 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 the holder has engaged in a pattern of such conduct; or
iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder’s web site 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 holder’s web site or location or of a product or service on the holder’s web site or location.

Accordingly, for a Complainant to succeed, the Panel must be satisfied that the domain name has been registered and is being used in bad faith.

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant’s contentions that the disputed

domain name was registered in bad faith and has been used in bad faith.

The Panel finds that:

- the Respondent was aware of Complainant's renowned trademark rights and activity at the time it registered the disputed domain name and nevertheless went ahead and registered it;

- the Respondent has not refuted the bad faith allegations concerning the registration and use of the disputed domain name (nor the allegations of providing an invalid email address on the website corresponding to the disputed domain name) made by the Complainant in this proceeding. Indeed, it has limited its response to affirm that he had "clearly mentioned on the website Main page Footer and about pages" that they are an independent online repair store.

The Respondent has not responded to nor denied any of the assertions made by the Complainant's representative in the cease and desist letter they sent to him before starting this proceeding.

Finally, it appears from the document provided by the Complainant that the Respondent is using the disputed domain name to resolve to an active website displaying the trademarks of the Complainant and suggesting endorsement and/or sponsorship.

It is the Panel's opinion that all of the above has shown the Respondent's bad faith registration and use of the disputed domain name, which clearly falls within the example given in paragraph 4 of the Policy.

Considering the foregoing, the Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraphs 4(a)(i) and 4(a)(iv) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MICROSOFTLIVEHELP.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2021-02-18

Publish the Decision