Decision for dispute CAC-UDRP-101991

Case number	CAC-UDRP-101991
Time of filing	2021-01-26 00:00:00
Domain names	livemicrosofthelp.com, livemicrosoftsupports.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Microsoft Corporation

Complainant representative

Organization	Convey srl

Respondent

Organization	Rdckon Web Tech LLP

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 names.

IDENTIFICATION OF RIGHTS

The Complainant (Microsoft Corporation) is the owner of various trademark registrations for MICROSOFT such as:

• International Trademark n. 1318242 registered from 27.05.2016;

• International Trademark n. 1142097 registered from 22.08.2012;

• European Trademark n. 000330910 registered from 07.05.1999;

• European Trademark n. 000479956 registered from 25.03.1999;

• Indian Trademark n. 430450 registered from 30.11.1984.

The disputed domain names <livemicrosofthelp.com> and <livemicrosoftsupports.com> were registered on 07.04.2020 and 13.10.2018.

FACTUAL BACKGROUND

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FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a company founded on April 4, 1975 and headquartered in Redmond, Washington, USA. It develops, manufactures, licenses, supports, and sells computer software, consumer electronics, personal computers, and related services. The name Microsoft derives from the words microcomputer and software. By the late 1980s, the Complainant had become the world's biggest personal-computer software company, based on sales.

Microsoft Office, which was introduced in 1990, has bundled separate applications such as Microsoft Word and Microsoft Excel and, few years later, the Complainant began to expand its product line into computer networking and the World Wide Web releasing Windows 95 operational system.

In 2000, the Complainant has entered the gaming and mobile phone market. The Windows Mobile OS has been used by numerous sellers including HTC, LG, Samsung, LG and, the subsequent year, Microsoft released the Xbox followed by Xbox Live in 2002 and Xbox 360 in 2005.

In 2014, Microsoft has shifted away from consumer tech and toward business services, particularly subscription - or advertising-based online services such as cloud computing.

Today, Microsoft is amongst the leading players in the world hi-tech, with about 120 subsidiaries and 160.000 employees worldwide. In 2020, the revenues were almost USD 143.000 million and its ranked number 21 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 has been ranked in the third position.

The Complainant is the owner of various trademark registrations for MICROSOFT. The trademark "MICROSOFT", registered and used since many years, is distinctive and well known all around the world, including in India where prima facie the Respondent is based. The Complainant has been extensively using the "MICROSOFT" denomination on all internet environments including and not limited to the company's official website and its official accounts on the major social networks such as LinkedIn, Instagram, Facebook, Twitter and blog.

The disputed domain names were registered, without authorization of Complainant by the Respondent from January 2020 and July 2020, without authorization of Complainant, and have been pointed to websites confusingly similar to the Complainant's websites offering for sale Complainant's products and IT services.

The cease-and-desist letters were sent on January 8, 2021 to Respondent's e-mails indicated in the website corresponding to the disputed domain names when the internet users attempt to purchase the services offered by the Respondent via PayPal, but he has not deemed appropriate to answer. Furthermore, one of the used e-mail addresses enquiry@strykerwebtech.com was inactive. In light of the absence of a reply and the failure to comply with the request for transfer of the disputed domain names, the Complainant filed the present Complaint in order to obtain the transfer of the disputed domain names under its ownership and control.

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The disputed domain names incorporate the Complainant's MICROSOFT trademark in its entirety. It is a well-established principle that domain names that wholly incorporate trademarks, in particular ones as famous MICROSOFT, are found to be confusingly similar for the purposes of the Policy, despite the circumstance that the disputed domain names contain geographical elements, while cannot be considered enough to distinguish disputed domain names from the Complainant's mark, is all the more apt to induce confusion among Internet users. MICROSOFT is, in fact, internationally well-known marks in the sector of software programs and the Complainant's products are sold worldwide.

The addition of generic word to a trademark or a misspelling in a domain name is also insufficient in itself to negate confusing similarity between a trademark and a domain name, in the present case the addition of “live”, “help” and “support” in the disputed domain names can increase the confusing similarity.

In light of the above, the disputed domain names are certainly confusingly similar to the prior registered trademarks in which the Complainant has rights pursuant to paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the domain name(s) (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

According to paragraph 4(a) of the Policy, the burden of proving the absence of the respondent’s rights or legitimate interests in respect of the domain name lies with the complainant. It is sufficient for the complainant to produce prima facie evidence in order to shift the burden of production to the respondents.

The mere registration of a domain name does not establish rights or legitimate interests in a disputed domain names. The Respondent is not licensees, authorized agent of the Complainant or in any other way authorized to use Complainant’s trademarks. Specifically, the Respondent is not authorized reseller of the Complainant and has not been authorized to register and use the disputed domain names.

The Respondent is not commonly known by the disputed domain names as individuals, business or other organization and his family name do not correspond to MICROSOFT or the disputed domain names.

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

The disputed domain names are redirected by the Respondent to websites reproducing Complainant’s trademarks with layouts confusingly similar to the Complainant’s website, in an attempt to pass off the Complainant and to offer technical support services and Complainant’s products. In providing his technical support assistance the Respondent offers to customers payments via PayPal. Therefore, it is clear that the Respondent provides services without authorization, not limited to the Complainant’s products, with the aim to obtain profit from internet users requesting his assistance.

Thus 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 - but at the same time wrongly - assume that the website is sponsored by, affiliated with, or otherwise approved by the legitimate rights owner, namely the Complainant.

The Respondent is not a reseller of Complainant’s products and he attempts to pass off as the Complainant indeed he uses the Complainant’s trademarks in the header of the websites, he has named himself Live Microsoft Support and the websites corresponding to the disputed domain names have similar layouts to the Complainant’s website, using also the color blue similar to the one used by the Complainant in his website.

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

C. The domain name(s) was/were registered and is/are being used in bad faith (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

As to the assessment of the Respondent’s bad faith at the time of registration, in light of the registration and intensive use of the trademark MICROSOFT since many years, the advertising and sales of the Complainant’s products worldwide, the Respondents could not have possibly ignored the existence of the Complainant’s trademark, confusingly similar to the

disputed domain names. The Complainant has many subsidiaries worldwide.

The aforesaid trademark of the Complainant enjoys worldwide reputation in the sector of IT, Microsoft is amongst the leading players in the world hi-tech and, in 2020, the revenues were almost USD 143.000 million placing number 21 in the 2020 Fortune 500 rankings of the largest United States corporations by total revenue. The Complainant is also 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 has been ranked in the third position.

The disputed domain names were registered in 2020, years after the Complainant obtained its trademark registrations.

Furthermore, the actual knowledge of MICROSOFT trademark by Respondent at the time of the registration of the disputed domain names is demonstrated by the facts that the Respondent provides guidelines and support services regarding MICROSOFT products and services and that the Respondent reproduces the Complainant's trademarks in the websites corresponding to the disputed domain names.

By virtue of its extensive worldwide use, the Complainant's trademark MICROSOFT has become a well-known trademark in the sector of IT, as also indicated in many UDRP decisions.

Furthermore, the knowledge of MICROSOFT trademark by Respondent at the time of the registration of the disputed domain names is demonstrated by the fact that the Respondent provides support services regarding the Complainant's and third-parties' products and that the Respondent reproduces the Complainant's trademarks in the websites corresponding to the disputed domain names, in order to pass off as the Complainant.

With reference to the above, the Complainant highlights that it has been stated in various decisions that the registration of a domain name with the knowledge of the complainant's trademark is an evidence of bad faith.

With reference to the use in bad faith, the disputed domain names resolve to websites where Complainant's trademarks are misappropriated without the authorization, approval, or license of the Complainant in an attempt to pass off the Complainant and where the Respondent provides assistance to internet users. As explained above, the Respondent has created websites, confusingly similar to the Complainant's website as to the whole layout, using Complainant's trademarks and naming himself Live Microsoft Support.

Furthermore, in offering technical support assistance in the pages called "Plans", the Respondent provides the links to PayPal for the payments of his services. So, the Respondent, passing off as the Complainant, exploits the value of the Complainant's trademark MICROSOFT, without authorization, in order to obtain profits from the sale of his technical support assistance services to the customers. The internet users, in light of the confusing similarity of the websites corresponding to the disputed domain names, can suppose that the websites are connected to the Complainant or authorized by the Complainant and can purchase the Respondent's services. Furthermore, the absence of a clear and evident disclaimer informing the users as to the Respondents' lack of relationship with the Complainant and the Respondent is absent. Thus, the internet users can assume that the disputed domain names at issue and the corresponding websites are sponsored by, affiliated with, or otherwise approved by the Complainant.

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

Moreover, the Respondent competes directly with the Complainant offering products and services of assistance, also with the Complainant's trademarks, by using websites corresponding to the disputed domain names therefore, diverting potential customers of the Complainant to his websites, the Respondent is disrupting the Complainant's business and reputation. This circumstance described above amounts to bad faith registration and use according to paragraph 4(b)(iii) of the Policy.

The cease and desist letters were sent to the e-mails indicated in the PayPal links dedicated to the payments but the

Respondent did not deem appropriate to answer. In particular on this point, prior panels have also held that a failure to respond to a cease-and-desist letter can be evidence of bad faith.

In light of the above, the Complainant respectfully submits that the disputed domain names were registered and are being used in bad faith in full satisfaction of paragraphs 4(a)(iii) and 4(b) of the Policy

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

No administratively compliant response has been filed timely within the time limit expiring on 17.2.2021, but the Respondent provided a Nonstandard Communication on 23.2.2021 stating, that the proceedings are extra-jurisdictional. India is a signatory to Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters on 23 November 2006 and the said convention is applicable to the facts of the matter. Pertinently, the service of summons/ notices have not been served as per the said convention. Be that as it may, it is submitted that Respondent has no concern with the disputed domain names. The disputed domain names are not operated by the Respondent and were purchased on asking of Mr. Dalip Thupela (<livemicrosofthelp.com>) and Mr. Arjun Singh (<livemicrosoftsupports.com>) who are the owners of the disputed domain names, and, thus, are absolutely liable apropos disputed domain names. The Respondent sent a notice in this regard to the aforesaid users. Since the Respondent has no concern with the disputed domain names, he has no objection if the disputed domain names are transferred to the Complainant or anyone for that matter.

RIGHTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Complainant has established the fact that it has valid rights for the trademark MICROSOFT with many international and national registrations worldwide including the Indian Trademark Registration 430450 registered from 30.11.1984, whereas the Respondent is located in India according the WHOIS records. The disputed domain names have been registered on 07.04.2020 and 13.10.2018, i.e. more than 30 years after the trademark registration.

There are no doubts that the Complainant's trademark "MICROSOFT" is distinctive and well-known worldwide including the India where the Respondent is located according the WHOIS records.

The Complainant's trademark MICROSOFT is contained in both disputed domain names entirely. The rest parts of both disputed domain names contain the generic term LIVE and generic terms HELP or SUPPORTS. The adding of these generic terms to the trademark does not change the overall impression of the designations as being connected to the Complainant and its trademark and more likely strengthens the likelihood of confusion between the disputed domain names and Complainant's trademark as the Complainant's products as the providing of the HELP or SUPPORT in connection with the IT services or products could be expected. It is indeed obvious that although the disputed domain names are composed out of the word MICROSOFT between two other generic words (LIVE and HELP/SUPPORTS), the word MICROSOFT is incontestably the principal part of the disputed domain names.

Furthermore, the addition of the generic top level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.

The Complainant has therefore, to the satisfaction of the Panel, shown the disputed domain names are confusingly similar to the Complainant's trademark "MICROSOFT" in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (ii) the respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie case (not challenged by the Respondent who did not filed any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain names, since the Respondent is not related in any way with the Complainant and there is no indication that the Respondent is commonly known by the term “LIVE MICROSOFT HELP” nor “LIVE MICROSOFT SUPPORTS” or that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services. There is also no evidence, that the Respondent is making a legitimate noncommercial or fair use of the domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Moreover, the disputed domain names resolve to the websites where the Complainant’s trademark MICROSOFT is published and the Complainant’s products (WINDOWS 10 operation system, OneNote program, Xbox One console) or Respondent’s services (support) are offered for sale. There is no evident disclaimer as to the Respondent’s lack of relationship with the Complainant. Such use cannot be considered neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain names. Furthermore, such use of the disputed domain names cannot be considered a legitimate non-commercial or fair use without intent for commercial gain, because the Respondent is undoubtedly attempting to gain from the sales of services and products via PayPal payment system and it is clear that the Respondent’s intention is to benefit from the Complainant’s trademarks’ reputation to disrupt the Complainant’s business and to illegitimately trade on the Complainant’s fame for commercial gain.

The Panel therefore considers that 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (iii) the domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain names that consist the full content of the Complainant’s trademark “MICROSOFT” and generic terms “LIVE, HELP and SUPPORTS”. There are no doubts that the Complainant’s trademark is distinctive, famous and is well-known worldwide. It could be therefore concluded that the Respondent had or should have the Complainant and its trademark in mind when registering the disputed domain names.

Furthermore, the disputed domain names redirect to the websites with the offer of the products and services connected to the Complainant and the Complainant’s trademark is contained within the websites. This indicates that the Respondent was fully aware of the Complainant’s trademark reputation and the purpose of the registration of the disputed domain names was solely to capitalize on the reputation of the Complainant’s trademark by diverting Internet users seeking Complainant’s products or help/support services to Respondent’s websites for financial gain, by intentionally creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its web sites and/or the goods offered or promoted through said web sites

Considering the (i) confusing similarity between the Complainant’s well-known trademark and the disputed domain names, (ii) long time between the registration of the Complainant’s trademark and the disputed domain names, (iii) use of the disputed domain names for the offer of the products or help/support services that are connected to the Complainant and his products/services, (iv) distinctiveness of the Complainant’s trademark, (v) no response of the Respondent to the cease and desist letter before the commencing of the proceedings and (vi) the failure of the Respondent to submit a response or to provide any evidence of good faith use, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

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

PROCEDURAL FACTORS

The Complainant requested that the disputed domain names be consolidated in a single UDRP proceeding and argued that the consolidation of multiple registrants as respondents in a single administrative proceeding may in certain circumstances be appropriate under paragraph 3(c) or 10(e) of the Rules, provided that the Complainant can demonstrate that the disputed domain names or the web sites to whom they resolve are subject to common control, and the Panel, having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.

The Complainant presented substantial evidence, that the disputed domain names are subject to common control of a person or entity or group of persons or entities.

• the word "live" is indicated in both disputed domain names.

• the registrants of both disputed domain names as disclosed by the registrar share the same country and state/province – India and the state of Uttar Pradesh.

• there is the same registrar, i.e. GoDaddy.com, LLC, of both disputed domain names as well as the same hosting provider, i.e. Web Werks India PVT. LTD D/B/A Zenregistry.com.

• the websites to whom both disputed domain names resolve share the same IP address (as verified by the Panel – 103.92.235.21);

• both disputed domain names share the same Name Servers: NS45.HOSTINGRAJA.IN / NS46.HOSTINGRAJA.IN / NS69.HOSTINGRAJA.IN / NS70.HOSTINGRAJA.IN.

• the websites to whom both disputed domain names resolve share similar layout.

• the same or similar products are offered for sale in the websites to whom both disputed domain names resolve.

• the same name is indicated in the websites to whom both disputed domain names resolve, i.e. Live Microsoft Support.

The dispute could therefore continue consolidated with regards to both disputed domain names.

The Nonstandard Communication provided by the Respondent on 23.2.2021 has not be taken into account by the Panel as it was provided after the time limit for the Respondent's response. Moreover, even if is it true that the Respondent registered the disputed domain names on the basis of the instructions of the third persons, he or it is still registered as the registrant of the disputed domain names and is, therefore, the respondent within the meaning of the Policy.

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

PRINCIPAL REASONS FOR THE DECISION

The Panel considers that the Complainant has shown that the disputed domain names <livemicrosofthelp.com> and <livemicrosoftsupports.com> are confusingly similar to a trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain names and the disputed domain names have been registered and are being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LIVEMICROSOFTHELP.COM**: Transferred
2. **LIVEMICROSOFTSUPPORTS.COM**: Transferred

PANELLISTS

Name	**JUDr. Petr Hostaš**

DATE OF PANEL DECISION 2021-02-24

Publish the Decision