

## Decision for dispute CAC-UDRP-104360

Case number	CAC-UDRP-104360
Time of filing	2022-02-18 09:59:14
Domain names	fixmicrosoft.com, homemicrosoft.com, microsofterror.com, microsoftsux.com, microsoftgeeks.com

### Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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### Complainant

Organization	Microsoft Corporation
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### Complainant representative

Organization	Convey srl
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### Respondent

Name	Ding Yun Hui
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#### 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 is the owner of various trademark registrations for word and device MICROSOFT marks, including but not limited to the following:

- International Trademark No. 1318242 for „MICROSOFT“, registered on May 27, 2016;
- International Trademark No. 1142097 for Four Square Design and MICROSOFT, registered on August 22, 2012;
- European Union Trademark No. 000330910 for „MICROSOFT“, registered on May 7, 1999; and
- European Union Trademark No. 000479956 for „MICROSOFT“, registered on March 25, 1999.

The Complainant also holds a domain name registration which contains the MICROSOFT trademark, <microsoft.com>, and owns official accounts on major social networks such as LinkedIn, Instagram, Facebook and Twitter.

#### FACTUAL BACKGROUND

The Complainant, Microsoft Corporation, was founded on April 4, 1975 and headquartered in Redmond, Washington, USA. The Complainant develops, manufactures, licenses, supports and sells computer software, consumer electronics, personal computers and related services. The Complainant is one of the companies in the hi-tech sector, with about 120 subsidiaries

and 160,000 employees worldwide. In 2021, its revenue was above USD168 billion, and it is ranked #21 in the 2021 Fortune 500 rankings of the largest United States (“U.S.”) corporations by total revenue. The Complainant is considered one of the Big Five companies in the U.S. information technology industry, along with Google, Apple, Amazon and Facebook. It is also ranked third place in the Interbrand annual ranking of best global brands in 2021.

The disputed domain names, <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com>, <microsoftsux.com> and <microsoftgeeks.com>, were registered on October 28, 2020, and <microsoft800.com> was registered on April 21, 2021.

The disputed domain names, <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com>, <microsoftsux.com> and <microsoft800.com> resolved to inactive websites and <microsoftgeeks.com> resolved to an active website with third party links to gambling websites.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to its MICROSOFT mark on the basis that the addition of the terms “fix”, “home”, “error”, “sux”, “800” and “geeks” are insufficient to avoid the finding that the disputed domain names are confusingly similar to its trademark.

The Complainant also argues that the Respondents do not have any rights or legitimate interests in the disputed domain names. The Respondents are not commonly known by the disputed domain names. In addition, the Respondents are not affiliated with the Complainant nor did the Complainant license or authorize the Respondents to use the MICROSOFT mark.

The Complainant further asserts that the disputed domain names have been registered and are being used in bad faith as the Respondents should have known of the Complainant’s MICROSOFT mark at the time of registration of the disputed domain names.

The Complainant also asserts that the Respondents have not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondents that would not be illegitimate.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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).

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#### 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

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#### BAD FAITH

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).

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#### PROCEDURAL FACTORS

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.

## Preliminary Issue: Consolidation of Proceedings

The Complainant requested a consolidation of the proceeding in relation to the disputed domain names which are registered in the names of multiple respondents.

On this issue, the Panel finds guidance from the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0), section 4.11.2:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

Panels have considered a range of factors, typically present in some combination, as useful to determine whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s)." (See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. D2010-0281).

The Panel also notes the case law presented by the Complainant including *Philip Morris USA Inc. v. Domain Administrator, Eastern Valley Limited / Domain Administrator, China Capital Investment Limited*, WIPO Case MO. D2017-0281 [Consolidation ordered where all registrants share the same email address, and that all (except one) have listed the same telephone number in their registration details for the disputed domain names]; *Alen Mironassyan, Alen Mironassyan v. Cephalon, Inc.*, CAC Case No. 100892 [Consolidation ordered where (i) the same registrars was used, (ii) identical website content was displayed, (iii) identical name server changes were made at a single point in time, and (iv) identical affiliate ID numbers for an affiliate marketing program were used]; and *Ecco Sko A/S v. tian yu, Karei, Wuxiaoman, xiao tian*, WIPO Case No. 2011-1606 [consolidation ordered when it was more likely than not that the domain names are subject to common ownership or control of the same entity and such consolidation would be fair and equitable to all parties and procedurally efficient (domain names included the words "shoes" and "uk" and resolved to websites selling counterfeits similar in look, feel and structure).]

While panels have considered numerous factors to determine if consolidation is appropriate, the various factors must be looked at in totality and not piecemeal. The test should be one that includes the totality of circumstances presented to the panels taking into account all the relevant factors and evidence presented. The relevant factors list is not closed and has developed over the years with changes in cybersquatting practices. The focus should primarily be on facts that show a viable connection between the disputed domain names. Since the particulars of disputed domain names may be inaccurate or false, panels have looked to secondary evidence, such as the content of websites, similar naming patterns, same registrars, same registration date and identical name servers, to name a few. The more factors a complainant can show the higher likelihood that the disputed domain names are commonly owned or controlled. Be that as it may, the Panel is still the gatekeeper in determining whether the evidence attached to the Complaint is sufficient to show common ownership or control of all the requested to be consolidated domain names.

Considerations raised by the Complainant in support of its request for consolidation include the following:

- (a) the generic Top-Level Domain ("gTLD") extensions of the disputed domain names are the same, being ".com";
- (b) the registrants of the disputed domain names all originate from China;
- (c) all of the disputed domain names contain the MICROSOFT trademark;

- (d) all of the domain names, save for <microsoftgeeks.com>, are hosted by the same hosting provider, Tencent Cloud Computing (Beijing) Co. Ltd., IP address and resolved to an inactive website;
- (e) all of the disputed domain names, save for <microsoft800.com>, share the same registrar, Chengdu West Dimension Digital Technology Co., Ltd; and
- (e) all of the domain names, save for <microsoft800.com> which was registered on April 22, 2021, were registered on October 28, 2020.

In the present case, the Panel is of the view that factors (a), (b) and (c) presented by the Complainant are insufficient, on their own, in showing common ownership or control. As to factor (d), the Complainant argued that the disputed domain names <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com> and <microsoftsux.com>, <microsoft800.com> are hosted by the same registrar, Tencent Cloud Computing (Beijing) Co. Ltd., IP address and resolved to an inactive website. While no evidence was provided to show that these disputed domain names share the same IP address, the Panel was able to verify independently that all of the above domain names except <microsoft800.com> resolve to the same IP address. While all these domain names do not resolve to active websites, this fact is inconclusive, on its own, since it fails to show a positive connection between these domain names.

Having reviewed the Registrars verifications, the Panel notes that there are multiple respondents identified in this proceeding for the following disputed domain names: <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com> and <microsoftsux.com> registered by Yun Hui Ding; <microsoft800.com> registered by Qian Su; and <microsoftgeeks.com> registered by Hong Xin Wang.

Although the names and contact information of the registrants are different, the Panel notes that there are some similarities in the postal code and country state for Yun Hui Ding and Qian Su, these similarities are insufficient since the postal code is still different and the fact that the country is the same – China, is insufficient, on its own. Moreover, the registrar for the disputed domain name, <microsoft800.com>, is Cloud Yuqu LLC, which differs from the rest of the domains, and this domain does not share the same name server and was registered at a later date, being April 21, 2021.

Against this backdrop, the evidence shows that it is more likely than not that the four domain names <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com> and <microsoftsux.com>, are subject to common control and should be allowed to be consolidated under the same UDRP proceeding.

In relation to <microsoftgeeks.com> the contact information of the registrant, Hong Xin Wang, differs largely from the other registrants. The disputed domain name does not share the same hosting provider, IP address and name server as the rest of the disputed domain names. In addition, the disputed domain name resolved to an active website with third party links to gambling sites, unlike the rest of the disputed domain names which resolved to inactive websites.

The Panel therefore does not consider the disputed domain names <microsoft800.com> and <microsoftgeeks.com>, to be subject to common ownership or control with the other domain names.

For the above reasons and given the fact that the Respondents did not file a Response, it is the Panel's view that only the disputed domain names, <fixmicrosoft.com>, <homemicrosoft.com>, <microsofterror.com>, and <microsoftsux.com> shall be consolidated and adjudicated under this proceeding.

For the avoidance of doubt, the Complainant is not precluded from filing a complaint against the registrants for <microsoft800.com> and <microsoftgeeks.com>.

#### Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreements for the several of the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) the disputed domain names and gTLD are in Latin characters; and
- (ii) the disputed domain names consist of additions of English words, “fix”, “home”, “error” and “sux” (a slang word of the word “sucks”);
- (iii) English is the primary language for business and international relations; and
- (iv) additional expense and delay would be incurred if the Complaint is translated into Chinese.

The Respondents did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondents appear to be familiar with the English language, taking into account the Respondents’ selection of the English-language trademark and the domain names in dispute. In the absence of an objection by the Respondents, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

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#### PRINCIPAL REASONS FOR THE DECISION

##### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the MICROSOFT mark.

The differences between the disputed domain names and the Complainant’s MICROSOFT mark are the addition of the terms “fix”, “home”, “error”, “sux” and a gTLD “.com”.

It is established that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.8).

It is also established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L’Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

The disputed domain names consist of the Complainant’s MICROSOFT mark and the addition of the terms “fix”, “home”, “error” and a gTLD “.com” which in the Panel’s view does not avoid confusing similarity with the Complainant’s trademark

(see *Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*, WIPO Case No. D2015-2333; WIPO Overview 3.0, section 1.9).

It is further established that a domain name consisting of a trademark and a negative or pejorative term (such as <[trademark]sucks.com>, <[trademark].com>, <[trademark].com>, or even <trademark.sucks>) is considered confusingly similar to the complainant's trademark for the purpose of satisfying standing under the first element (see WIPO 3.0, section 1.13). The disputed domain name which consists of the Complainant's MICROSOFT mark and the addition of the term "sux", which is a slang for "sucks", and a gTLD ".com" does not avoid confusingly similarity with the Complainant's trademark.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the MICROSOFT mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

#### B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondents lack rights or legitimate interests in respect of the disputed domain names and the Respondents have failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondents to use the MICROSOFT mark (See *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that the Respondents are not commonly known by the disputed domain names.

The Respondents did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondents have no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to show that the respondent registered and is using the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names resolved to inactive webpages. The test to apply to determine bad faith is that of the totality of circumstances. In doing so we must look to: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this case, the evidence shows that the Complainant's mark is distinctive, famous and well-known worldwide. The strong reputation and goodwill of the Complainant's mark is evidence that the Respondents are unlikely to have registered the disputed domain names without sight and knowledge of the Complainant's mark and it is implausible that there is any good faith use to which the disputed domains name may be put to. It is also the Complainant's evidence that the Respondents

could not have registered the disputed domain names without prior knowledge of the Complainant's mark as the Respondents' names have no connection with the Complainant's MICROSOFT mark which was registered long ago. This is another indicator of bad faith on the part of the Respondents (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The evidence submitted by the Complainant also shows that the disputed domain names resolved to inactive websites. The Complainant argues that the Respondents have targeted the Complainant by registering the disputed domain names to prevent the Complainant from reflecting the marks in corresponding domain names. It is well established that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The Panel also notes that the Respondents did not submit a Response in this proceeding and did not respond to the Complainant's cease and desist letter issued prior to the proceedings which are further indications of the Respondents' bad faith.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's mark, the fact that the disputed domain names resolved to inactive websites, the fact that no Response was submitted by the Respondents in response to the Complaint and the fact that the Respondents did not respond to the Complainant's cease and desist letter, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FIXMICROSOFT.COM**: Transferred
2. **MICROSOFT800.COM**: Remaining with the Respondent
3. **HOMEMICROSOFT.COM**: Transferred
4. **MICROSOFTERROR.COM**: Transferred
5. **MICROSOFTSUX.COM**: Transferred
6. **MICROSOFTGEEKS.COM**: Remaining with the Respondent

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## PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-05-26

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Publish the Decision

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