Decision for dispute CAC-UDRP-104727

Case number	CAC-UDRP-104727
Time of filing	2022-07-15 09:01:47
Domain names	microsoftgeeks.com

Case administrator

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

Complainant

Organization	Microsoft Corporation

Complainant representative

Organization	Convey srl

Respondent

Name	Hong Xin Wang

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

Microsoft is the owner of various trademark registrations for MICROSOFT such as:
• International Trademark n. 1318242 – MICROSOFT - Cl. 9;
• International Trademark n. 1142097 – MICROSOFT - Cl. 9, 16, 25, 28, 35, 36, 38, 39, 41, 42, 45;
• European Union Trademark n. 000330910 – MICROSOFT – Cl. 35, 41, 42;
• European Union Trademark n. 000479956 – MICROSOFT – Cl. 9; and
• European Union Trademark n. 007138225 – MICROSOFT OFFICE - Cl. 9 and 42.

The trademark “MICROSOFT”, registered and used since many years, is distinctive and well known all around the world.

FACTUAL BACKGROUND

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

According to the registration agreement, the language of the proceeding should be Chinese but the Complainant respectfully requests that the proceeding is in English in light of the following circumstances:

• the Disputed Domain Name and the top-level domain ".com" are in Latin characters;
• the Disputed Domain Name include the English word geeks;
• English is the primary language for business and international relations;
• the website corresponding to the Disputed Domain Name contains English words;
• in order to avoid additional expense and delay that would be incurred if the Complaint must be translated into Chinese.

Along these lines, see the decision Orlane S.A. v. Yu Zhou He / He Yu Zhou WIPO Case No. D2016-1763: "The Registration Agreement in this case is in Chinese but the Complainant filed the Complaint in English and requested that English be the language of the proceeding, for the reasons that the Complainant does not have knowledge of Chinese whereas the Respondent can be presumed to have knowledge of English since the Disputed Domain Name is registered in Latin script and not Chinese script. English would be a fair language of compromise to both Parties. To require the Complainant to translate the Complaint and all supporting documents into Chinese would cause an unnecessary burden to the Complainant and unnecessarily delay the proceeding. […] The proceeding would be unduly delayed if the Complaint and annexes thereto had to be translated into Chinese. In keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, the Panel accordingly determines that it would be appropriate for English to be the language of the proceeding."

The Complainant has extensively used the "MICROSOFT" denomination on all internet environments including and not limited to the company's official websites https://www.microsoft.com, www.office.com and its official accounts on the major social networks such as LinkedIn, Instagram, Facebook, Twitter and blog.

The Disputed Domain Name was registered, without authorization of Complainant, by the Respondent on October 28, 2020 and has been redirected to an online betting site.

In light of the Respondent's registration and use of the Disputed Domain Name, confusingly similar to its registered and well-known trademarks MICROSOFT, the Complainant instructed its representative to address to the owner of the Disputed Domain Name a cease and desist letter in order to notify him of the infringement of the Complainant's trademark rights, requesting the immediate cease of any use, and the transfer, of the Disputed Domain Name to the Complainant.

The cease-and-desist letter was therefore sent on January 19, 2022 to the Respondent's email indicated in the whois of the domain name <touxingyun.com>, whose the link to the corresponding website was indicated in the website related to the Disputed Domain Name <microsoftgeeks.com>.

In light of the absence of a reply to the cease and desist letter, the Complainant instructed its representative to file the Complaint in order to obtain the transfer of the Disputed Domain Name under its ownership and control.

A. The Disputed 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 Name incorporates 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 Name may also contain descriptive or generic terms, in the case at hand the generic term "geeks". See, among the decisions addressing situations where generic terms are used in combination with trademarks, Wal-Mart Stores, Inc. v. Henry Chan, WIPO Case No. D2004-0056 ("chase", "girlsof", "jobsat", "sams", "application", "blackfriday", "blitz", "books", "career(s)", "check", "flw", "foundation", "games", "mart", "photostudio", "pictures", "portrait", "portraitstudio(s)", "registry", "retaillink" and "wire" added to WALMART mark).

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 “geeks” in the Disputed Domain Name can increase the confusing similarity. Amongst others, GA Modefine S.A. v. Mark O'Flynn Case No. D2000-1424 “It is indeed obvious that although the Respondent's Domain Name is composed out of the word "armani" and the (descriptive) word "boutique", the first of these terms is incontestably the principal part of the Disputed Domain Name. In this view, the Administrative Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademarks”.

Furthermore, the top level “.com” is merely instrumental to the use in Internet - as found in The Forward Association, Inc., v. Enterprises Unlimited (Forum case FA0008000095491, October 3, 2000) and numerous others - and not able to affect the confusing similarity of the Disputed Domain Name to the Complainant’s trademark.

In light of the above, the Disputed Domain Name is 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 Disputed Domain Name;
(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 Disputed Domain Name lies with the Complainant. It is nevertheless a well-settled principle that satisfying this burden is unduly onerous, since proving a negative fact is logically less feasible than establishing a positive. Accordingly, it is sufficient for the Complainant to produce prima facie evidence in order to shift the burden of production to the Respondents. See, e.g., Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270.

As a preliminary note, along the lines set forth in Pharmacia & Upjohn Company v. Moreonline, WIPO Case No. D2000-0134 and National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118, the mere registration of a domain name does not establish rights or legitimate interests in a disputed domain name.

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 Name.

Upon information and belief, the Respondent is not commonly known by the Disputed Domain Name as individual, business or other organization and his family name do 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.
As better detailed in the paragraphs above and highlighted in the screenshots provided at annexes to the Complaint, the Disputed Domain Name <microsoftgeeks.com> is redirected by the Respondent to a website showing various links dedicated to online betting.
Thus, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion: an internet user could reasonably - but at the same time wrongly - assumes that the website corresponding to microsoftgeeks.com is sponsored by, affiliated with, or otherwise approved by the legitimate rights owner, namely the Complainant.

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.

C. The Disputed Domain Name was registered and is 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 Disputed Domain Name. The Complainant has many subsidiaries worldwide including in China, where the Respondent is based.

The aforesaid trademark of the Complainant enjoys worldwide reputation in the sector of hi-tech, Microsoft is amongst the leading players in the world hi-tech and, in 2021 the revenues were USD 168 billion million placing number 21 in the 2021 Fortune 500 rankings of the largest United States corporations by total revenue. Microsoft 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 Interbrand annual ranking of the best global brands, in 2021 it has been ranked in the third position.

By virtue of its extensive worldwide use, the Complainant's trademark MICROSOFT has become well-known trademark in the sector of IT, as also indicated in many UDRP decisions: Microsoft Corporation v. Rdckon Web Tech LLP (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), Microsoft Corporation v. StepWeb, WIPO Case No. D2000-1500 (It is not possible that Respondent was unaware of the famous Microsoft mark at the time it registered the <microsofthome.com> domain name three years ago); Microsoft Corporation v. Paul Horner Case No. D2002-0029 (Complainant holds rights in the well-known trademark and service mark "MICROSOFT". This fact has been determined in prior administrative proceedings); Microsoft Corporation v. Webbangladesh.Com, WIPO Case No. D2002-0769, (stating that MICROSOFT "is a world-famous mark. It is perhaps one of the most recognized international trademarks in existence", Microsoft Corporation v. Charilaos Chrisochoou Case No. D2004-0186 (Previous Panel decisions under the UDRP have concluded that the addition of a generic term and/or a hyphen is not sufficient to prevent confusing similarity when the domain name contains a well-known trademark).

Therefore, it is clear that the Respondent was well aware of the Complainant's trademark and he registered the Disputed Domain Name with the intention to refer to the Complainant and its trademarks. As noted in Ferrari S.p.A. v. Allen Ginsberg, WIPO Case No. D2002-0033, "Respondent has registered the domain name <maserati.org> corresponding to the well-known or even famous trademark MASERATI which he must have been aware of". Having regard to the trademark's distinctiveness and well-known character, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the Disputed Domain Name, with which it is confusingly similar.

With reference to the use in bad faith, the Disputed Domain Name is redirected to a website dedicated to betting and gambling online, therefore, the Respondent intentionally attracts Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the website and its products. Along these lines, see the case No. D2015-1018 Sodexo v. Li Li: "In the absence of a response from the Respondent, this Panel concludes that the Respondent has taken advantage of the well-known character of the trademark SODEXO of the Complainant to attract consumers to a website which redirects them automatically to other websites of financial interest to the Respondent containing namely gambling contents, thus enabling the Respondent to earn revenues by attracting users to its website".

In the case at hand, the trademark MICROSOFT is widely known and, in light of its use, has become well-known worldwide. The Disputed Domain Name is redirected to an active website thus the Respondent profits from the Complainant's trademark reputation to obtain revenues from online betting links indicated in this website; furthermore, the Respondent's use of the Disputed Domain Name the business and the reputations of the Complainant. Therefore the registration and use of the Disputed Domain Name could be deemed aimed at disrupting the business of the Complainant and, in a broad sense, of a Respondent's competitor, where the interpretation of the word "competitor" under the Policy is wide as indicated in the WIPO decision No. D2000-0279 Mission KwaSizabantu v. Benjamin Rost: "The natural meaning of the word "competitor" is one who acts in opposition to another and the context does not imply or demand any restricted meaning such as a commercial or business competitor".

As an additional circumstance demonstrating bad faith, prior Panels have also held that a failure to respond to a cease and desist letter can be evidence of bad faith. See, e.g.,: HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager,

WIPO Case No. D2007-0062: “such bad faith is compounded when the domain name owner or its duly authorized privacy service, upon receipt of notice that the domain name is identical to a registered trademark, refuses to respond or even to disclose the domain name owner’s identity to the trademark owner... Such conduct is not consistent with what one reasonably would expect from a good faith registrant accused of cybersquatting”.

In light of the above, the Complainant submits 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

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(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. Complainant makes this request in light of the potential Chinese language Registration Agreement of the Disputed Domain Name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) The disputed Domain Name is composed by the Complainant’s trademark Microsoft and other Latin character “geeks”; 2) The Disputed Domain Name redirects to website containing English words; 3) Moreover, a translation of the Complaint to Chinese would entail significant additional costs for the Complainant and delay in the proceedings. Relevant decisions have been cited to support the Complainant’s positions.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant contends that the Disputed Domain Name <microsoftgeeks.com> is confusingly similar to the Complaint’s

trademark “Microsoft”. The Complainant, Microsoft, is amongst the leading players in the world hi-tech, with about 120 subsidiaries and 160.000 employees worldwide. It was founded by Bill Gates and Paul Allen in 1981, and has its businesses ranging from consumer tech to business services through subscription. The Complainant is the owner of the distinctive and well-known trademark Microsoft registered used since many years. The Complainant has extensively used the “MICROSOFT” denomination on all internet environments including and not limited to the company’s official websites https://www.microsoft.com.

The domain name <microsoftgeeks.com>, which was registered on 21 April 2021 according to the WHOIS records and registrar disclosures. It incorporates the Complainant’s trademark MICROSOFT in its entirety, in combination with generic term “geeks” which can be associated by internet users as users of Microsoft products. The addition of the gTLD “.com” does not add any distinctiveness to the Disputed Domain Name.

The Panel therefore concludes that the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Res endent to register or use the trademark or the Disputed Domain Name. There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademarks including the terms “MICROSOFT” and/or “microsoftgeeks”.

The organization of the Respondent, “Hong Xin Wang”, also has no connection with the Complainants’ brand. The Complainants did not grant any license or authorization to the Respondent to register or use the Disputed Domain Name, nor the use of the Complainants’ trademark on pages of the disputed websites.

In addition, The Respondent does not appear to have used the Disputed Domain Name in connection with active websites at any time since the registrations. Currently, the Disputed Domain Name is redirected to a website showing various links dedicated to online betting. Taking into overall circumstances, the Respondent has not been using the Disputed Domain Name for any bona fide offering of goods or services. By directing to websites showing online betting, the Respondent seems to be intentionally attempting to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion: an internet user could assume that the website corresponding to microsoftgeeks.com is sponsored by, affiliated with the Complainant.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

3. The Disputed Domain Name has been registered and is being used in bad faith.

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(a)(iii) and 4(b) of the Policy.

Registration of the Disputed Domain Name in bad faith – As far as registration goes, UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Complainant’s trademark registrations predate the registration of the Disputed Domain Name. The fact that the Complainant’s trademark is a well-known and that the Respondent has failed in presenting a credible evidence-backed rationale for registering the Disputed Domain Name implied

that the Respondent may have had knowledge of the Complainant's trademark at the time of registration of the Disputed Domain Name. It is reasonable to infer that the registrant registered the Disputed Domain Name with the knowledge of the complainant's trademark and/or brand influence.

Use of the Disputed Domain Name in Bad Faith – Currently, the Disputed Domain Name is currently redirected to a website dedicated to betting and gambling online. The Respondent is not making any active use of the Disputed Domain Name. At the same time, the Respondent could have registered the Disputed Domain Name to divert internet users for illegitimate commercial gains, by creating a likelihood of confusion: an internet user could assume that the website corresponding to <microsoftgeeks.com> is sponsored by, affiliated with the Complainant. According to paragraph 4(b)(iv) of the Policy, "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location", if found by the Panel, shall be considered evidence of registration and use of the domain name in bad faith.

Moreover, a cease and desist letter was sent to the Respondent on 19 January 2022 and the Respondent never responded. Prior panels have also held that a failure to respond to a cease and desist letter can be evidence of bad faith (see e.g., HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager, WIPO Case No. D2007-0062).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainants have failed to provide that Disputed Domain Name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MICROSOFTGEEKS.COM**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2022-08-13

Publish the Decision