

ADMINISTRATIVE PANEL DECISION

Microsoft Corporation v. Zubair Ibrahim
Case No. D2022-1891

1. The Parties

The Complainant is Microsoft Corporation, United States of America (“United States”), represented by Dinsmore & Shohl LLP, United States.

The Respondent is Zubair Ibrahim, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <the-impossible-quiz-game.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2022. On May 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 28, 2022. The Respondent sent informal communications to the Center on June 14, June 15, and June 28, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2022. The Respondent sent an informal communication to the Center on July 1, 2022, to which the Center sent a Possible Settlement email dated July 4, 2022. The Complainant requested on August 15, 2022, the suspension of the proceedings, accordingly the Center notified the suspension of proceedings to the parties on August 16, 2022. The Complainant requested to the

Center the reinstatement of proceedings on October 6, 2022, the Center reinstated the proceedings on October 10, 2022. The Respondent sent an informal communication to the Center on October 17, 2022, and a further one on November 5, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on October 31, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a global technology company that develops, manufactures, licenses, supports, and sells computer hardware and software solutions, among many other computer and software-related products and services. Some of these goods and services are offered through or in conjunction with the Complainant's subsidiaries, such as inXile Entertainment Inc. The Complainant's product offerings include numerous computer and video games, including game software distributed under the trademark IMPOSSIBLE QUIZ.

The trademark IMPOSSIBLE QUIZ is used with a well-known and unique logic-based quiz program. While not actually impossible, the quiz has a high degree of difficulty, often requiring unconventional thought-processes to solve the answers. The IMPOSSIBLE QUIZ game was first offered online in a non-downloadable format in February 2007, and later offered as a downloadable game starting in September 2007.

The Complainant has provided evidence of inXile Entertainment Inc.'s ownership of United States trademark registration No. 4089162 for IMPOSSIBLE QUIZ (word mark), filed on October 27, 2010, and registered on January 17, 2012, in international class 9.

The Complainant has provided evidence of its ownership of United States trademark registration No. 6573076 for IMPOSSIBLE QUIZ (word mark), filed on November 23, 2020, and registered on November 30, 2021, in international classes 9 and 41.

The disputed domain name <the-impossible-quiz-game.com> was registered on November 27, 2017, and is pointed to a website enabling users to play the IMPOSSIBLE QUIZ game and other online games. The website also displays a section named "ADVERTISEMENT" that, according to the screenshots submitted as Annex 4 to the Complaint, previously included various banners advertising third-party products and services.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name <the-impossible-quiz-game.com> is confusingly similar to the trademark IMPOSSIBLE QUIZ in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the terms "the" and "game" and the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is not commonly known by the disputed domain name or any portion thereof, nor is there any indication that the Respondent registered the disputed domain name as a trademark.

Secondly, the Complainant states that it has never assigned, sold or transferred any rights in its trademark IMPOSSIBLE QUIZ to the Respondent, nor has it ever granted the Respondent permission to use or register its mark as a domain name.

Moreover, the Complainant contends that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, nor is the Respondent using the disputed domain name in connection with a *bona fide* offering of goods or service since it is providing, without permission, the Complainant's copyrighted computer game program through the website associated with the disputed domain name, along with other unrelated computer game programs.

The Complainant states that, considering the *Ok! Data* criteria in which "the respondent must use the website of the domain name to sell only the trademarked goods", the website associated with the disputed domain name offers users access to at least a handful of games other than the Complainant's IMPOSSIBLE QUIZ game (*i.e.*, "The World's Easy-est Game," "Little Alchemy," and "Bloxorz," all of which originate with different entities, namely Mad Science Industries for The World's Easy-est Game, Jakub Kozlol for Little Alchemy, and Damien Clarke for Bloxorz) and fails to prominently and accurately disclose the relationship between the Respondent and the trademark owner.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent undoubtedly knew of the Complainant's rights in the trademark IMPOSSIBLE QUIZ at the time of registering the disputed domain name since the disputed domain name was registered in November 2017, over ten years after the first version of the Complainant's IMPOSSIBLE QUIZ game was made available online.

Moreover, the Complainant submits that, given that the Respondent's website includes an unauthorized copy of the Complainant's game software, it is readily apparent that the Respondent was aware of the IMPOSSIBLE QUIZ game and trademark when the disputed domain name was registered.

The Complainant underlines that the diversion of the Complainant's customers to a different website to create confusion with the Complainant's trademark and thereby to attract Internet users to the Respondent's website for its own commercial gain is also further proof of bad faith registration. The Complainant in fact asserts that the use of the Complainant's trademark as part of the disputed domain name is clearly calculated to draw in Internet users searching for the Complainant's trademark and/or to divert traffic away from legitimate, authorized websites hosting the software and appears intended to convey the impression that the website provides a legitimate offering of the Complainant's online software, either from the Complainant directly or some authorized party.

In addition, the Complainant emphasizes that consumers landing at the Respondent's website have no immediate way of knowing that they have not arrived at an authorized site, nor do they have any way of knowing that the other games provided through the website are not associated with the Complainant or the Complainant's computer games. The Complainant further contends that the disputed domain name, due to its composition, conveys the erroneous impression that they the correspondent website is connected to the Complainant's IMPOSSIBLE QUIZ trademark and product.

The Complainant further underlines that the website associated with the disputed domain name also contains a number of advertisements and that any user attempting to play any of the games on the website, including the Complainant's IMPOSSIBLE QUIZ game, must first sit through one or more advertisements before the game loads. The Complainant thus concludes that the Respondent is benefiting financially from these advertisements, whether they are paid advertisements or as a result of click-through commissions from these ads, and submits that use of a domain name to divert traffic to a website with pay-per-click advertisements is an indicator of bad faith.

Lastly, the Complainant highlights that the Respondent employed a privacy protection service in registering the disputed domain name, which supports an inference of bad faith.

B. Respondent

The Respondent sent informal communications to the Center, between June 14 and October 17, 2022, stating that i) at the time of registering the disputed domain name it was unaware of the Complainant and its rights in the trademark IMPOSSIBLE QUIZ, ii) that it has owned the disputed domain name since 2018 (in a

later communication it corrects this to November 27, 2017), whilst the Complainant registered the trademark in 2021 and, even if the trademark was registered in the name of another company before that time, it would have not known how to conduct a trademark search online, and that iii) should it lose, it would be willing to transfer the disputed domain name to another branded site (unrelated to the Complainant).

In additional later communications however, the Respondent states that it would be willing to settle the dispute by selling the disputed domain name to the Complainant for \$1000, which it believes is a fair price for the amount it invested on the website.

Moreover, upon failing to reach a settlement agreement with the Complainant during the suspension of the proceedings between August 16, 2022 and October 10, 2022, the Respondent sent a further email, on October 17, 2022, claiming that it invested a lot of money on the disputed domain name and requesting that the Center give him time to redirect <the-impossible-quiz-game.com>, stating that it was not aiming at the trademark but that it just wanted to move the website to other random domain name.

In a last informal email to the Center dated November 5, 2022, the Respondent requested that a 10 day access be granted to it in order to update the nameservers and put the disputed domain name offline.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark IMPOSSIBLE QUIZ based on the trademark registrations cited under section 4 above and the related trademark certificates submitted as annexes 6 and 7 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant’s trademark and the disputed domain names to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Moreover, as found in a number of prior cases decided under the Policy and indicated in section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within a domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element.

In the case at hand, the Complainant’s trademark IMPOSSIBLE QUIZ is entirely reproduced in the disputed domain name, with the mere addition of the terms “the” and “game” separated by hyphens and the gTLD “.com”, which is commonly disregarded under the first element confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent's rights or legitimate interests in respect of the domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with previous UDRP decisions, it is sufficient that the complainant show a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production on the respondent. If the respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy

In the case at hand, the Complainant has made a *prima facie* case and the Respondent has failed to raise any convincing circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Furthermore, there is no indication before the Panel that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name.

In light of the Respondent's redirection of the disputed domain name to a website featuring the Complainant's trademark and enabling users to play the Complainant's IMPOSSIBLE QUIZ game along with third-party online games, without providing any disclaimer of non-affiliation with the Complainant and also publishing sponsored advertisements, the Panel finds that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services, or a legitimate, noncommercial or fair use of the disputed domain name.

Moreover, the Complainant finds that the disputed domain name, combining the Complainant's trademark with non-distinguishing terms, namely the article "the" and the term "game", which is moreover directly referable to the Complainant's products, carries a high risk of implied affiliation. As stated in section 2.5.1 of the [WIPO Overview 3.0](#), "Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner".

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of i) the prior registration and use of the trademark IMPOSSIBLE QUIZ in connection with the Complainant's games, ii) the widely known character of the trademark and iii) the circumstance that the disputed domain name entirely reproduces the Complainant's trademark along with a descriptive term related to the Complainant's sector (games), the Respondent very likely registered the disputed domain name having the Complainant's trademark in mind.

Furthermore, the circumstance that the disputed domain name has been pointed to a website featuring the Complainant's trademark and copyrighted software, and enabling users to play the Complainant's IMPOSSIBLE QUIZ game demonstrates that the Respondent was indeed well aware of the Complainant and its trademark.

The Panel also finds that the Respondent's use of the disputed domain name in connection with a website providing the Complainant's online game along with games of the Complainant's competitors and displaying also sponsored advertisements amounts to bad faith under paragraph 4(b)(iv) of the Policy, since the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and the products and services offered and/or advertised therein.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <the-impossible-quiz-game.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: November 14, 2022