

ADMINISTRATIVE PANEL DECISION

Microsoft Corporation v. Mai Lan, ctpaction
Case No. D2022-3583

1. The Parties

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

Respondent is Mai Lan, ctpaction, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <thequizimpossible.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 Complainant on September 30, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 3, 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 Respondent of the Complaint, and the proceedings commenced on October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 27, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on November 2, 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

Per Complaint, 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 Complainant's subsidiaries, such as inXile Entertainment. Complainant's products include numerous computer and video games, including game software distributed under the name IMPOSSIBLE QUIZ. 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 and has been used ever since until today.

Complainant is, *inter alia*, the owner of IMPOSSIBLE QUIZ trademark registrations, including

- the United States of America Trademark Registration No. 4,089,162 for IMPOSSIBLE QUIZ, registered on January 17, 2012, for goods in international class 9; and
- the United States of America Trademark Registration No. 6,573,076 for IMPOSSIBLE QUIZ, registered on November 30, 2021, for goods in international class 9.

Complainant is also the owner of the copyright in the IMPOSSIBLE QUIZ computer game, under U.S. Copyright Registration Nos. TX0009015654 and TX0009038695.

The Domain Name was registered on May 30, 2022, and at the time of filing of the Complaint lead to a website that purportedly offered Complainant's IMPOSSIBLE QUIZ game (the "Website"). The Terms of Use page on the Website included, buried within its content, the statement that all materials on the Website are owned by Respondent, except for the games on the Website which are licensed. However, Complainant has not licensed its IMPOSSIBLE QUIZ mark to Respondent, nor has Complainant licensed its game software to Respondent for use on the site or otherwise. Moreover, the Terms of Use page on the Website is copied from the website of CoolMath.com. The name of the party involved was changed by Respondent in some, but not all, instances and the CoolMath.com name still appears in places. The Copyright Infringement Notice page of the Website also appears copied from CoolMath.com, again with the names changed, while the physical address given for Respondent is that of CoolMath.com. The site's Privacy Policy is similarly copied from another site, Poki.com, again as evidenced by the fact that the Poki.com name was not completely erased from the Website. Also Respondent is identified as an LLC on the pages copied from CoolMath.com, and as a B.V. on the page copied from Poki.com.

The Domain Name currently leads to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Domain Name incorporates Complainant's IMPOSSIBLE QUIZ trademark in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The addition of the article "the" and the reversal of the two words "impossible" and "quiz" does not prevent a finding of confusing similarity, as the IMPOSSIBLE QUIZ trademark remains clearly recognizable within the Domain Name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#); and [WIPO Overview 3.0](#), section 1.11).

The Panel finds that the Domain Name is confusingly similar to Complainant's IMPOSSIBLE QUIZ trademark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark).

These requirements are not cumulatively fulfilled in the present case. The statement on the Terms of Use page on the Website failed to accurately disclose the relationship between Complainant and Respondent, and in any case the presentation of this statement buried in the Terms of Use failed to constitute a prominent notice.

The Domain Name falsely suggested that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduced, without authorization by Complainant, Complainant's trademark, without any clear disclaimer of association (or lack thereof) with Complainant.

Furthermore, Respondent was providing, without permission, Complainant's copyrighted computer game program through the Website, along with other unrelated computer game programs. Complainant has not licensed or otherwise authorized Respondent to copy, reproduce, display, or otherwise exploit this copyrighted work, and as such Respondent's provision of the computer program may constitute copyright infringement (*Adobe Inc. v. Dmitrii Panin*, WIPO Case No. [D2021-0953](#)).

Moreover, the Terms of Use page on the Website is copied from other, third party, websites.

In addition, notwithstanding the reversal of the words "impossible" and "quiz", the Panel finds that the nature of the Domain Name, comprising Complainant's trademark in its entirety, carries a risk of implied affiliation (See [WIPO Overview 3.0](#), section 2.5.1.).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is

the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the IMPOSSIBLE QUIZ mark had been widely used and registered by Complainant before the Domain Name registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search and also due to Complainant's nature of business, provided also online, namely online sales (see *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Website gave the impression that it originated from Complainant, prominently displaying IMPOSSIBLE QUIZ signs on the Website, thereby giving the false impression that the Website emanated from Complainant. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

Furthermore, Respondent could have conducted a trademark search and should have found Complainant's prior registrations in respect of IMPOSSIBLE QUIZ (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host a website which appeared falsely to be that of Complainant.

The Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant's trademark and business. This further supports the finding of bad faith use (*Arkema France v. Aaron Blaine, supra*; *Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#); and [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

The Domain Name currently leads to an inactive website. The non-use of a domain name would not prevent a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and [WIPO Overview 3.0](#), section 3.3). In the circumstances of this case, the passive holding of the Domain Name is further evidence of Respondent's bad faith.

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii)

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 Domain Name, <thequizimpossible.com> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: November 10, 2022