

ADMINISTRATIVE PANEL DECISION

Microsoft Corporation v. James Anderson
Case No. D2024-2475

1. The Parties

The Complainant is Microsoft Corporation, United States of America, represented by D.M. Kisch Inc., South Africa.

The Respondent is James Anderson, United States of America.

2. The Domain Name and Registrar

The disputed domain name <xboxgames.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 18, 2024. On June 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 18, 2024, 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 (“Registration Private, Domains By Proxy, LLC”) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 2024, 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 amended Complaint on June 21, 2024.

The Center verified that the Complaint together with the amended 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on July 31, 2024. 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, an American multinational technology corporation with global operations offers for sale the Xbox video game console and entertainment system and associated software and accessories. The Xbox video game entertainment console has been almost exclusively distributed through the Complainant's official stores and websites and selected authorized distributors and retailers. Today, the Xbox is used by approximately 120 million consumers around the world.

The Complainant owns many national and international registrations for the mark XBOX (the "Mark") including, but not limited to:

- United States of America Registration No. 2646465, dated October 18, 1999, and registered on November 5, 2002;
- United States of America Registration No. 2698179, dated February 25, 2000, and registered on March 18, 2003;
- United States of America Registration No. 2811895, dated May 1, 2002, and registered on February 3, 2004.

The disputed domain name was registered on April 3, 2020. The disputed domain name resolved to a parking page offering pay-per-click ("PPC") links featuring the Mark and providing third-party links to gaming websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name is confusingly similar to the Mark because the disputed domain name is identical to the Mark except that the disputed domain name adds the word "games." The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, and never engaged in any bona fide commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Mark when registering the disputed domain name and that the disputed domain name was registered in bad faith to confuse and direct Internet users to websites not affiliated with or sponsored by the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

It is well-accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The Complainant has shown rights in the Mark for the purposes of the Policy by virtue of the Mark's registrations. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name's only deviation from the Mark is that the disputed domain name adds the word "games." This slight alteration between the Mark and the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Mark. The Mark is clearly recognizable in the disputed domain name, notwithstanding the added word. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. Moreover, the disputed domain name resolved to a PPC website providing links to websites purportedly offering products or services similar to the Complainant's product and services. PPC websites offering related or competitive services under a confusingly similar disputed domain name do not establish rights or legitimate interests. Such a use of a disputed domain name can never establish rights or legitimate interests in a disputed domain name. [WIPO Overview 3.0](#), section 2.9.

The Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Numerous factors indicating bad faith registration and use are evident in this case. Firstly, the disputed domain name was registered using a privacy service, suggesting an intent to conceal the registrant's identity. Additionally, the Mark is widely recognized, and it is implausible that the Respondent was unaware of the Mark at the time of registration. The added word "games" to the Mark attracts Internet users' attention and lures them to the Respondent's website. Furthermore, the disputed domain name resolves to a PPC website offering services competing with the Complainant's. Based on these factors, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith. [WIPO Overview 3.0](#), sections 3.1 and 3.2.

The Panel finds that the Complainant has established the third element 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 <xboxgames.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: August 14, 2024