

## **ADMINISTRATIVE PANEL DECISION**

Microsoft Corporation v. Abid Ali  
Case No. D2024-1313

### **1. The Parties**

The Complainant is Microsoft Corporation, United States of America (“United States”), represented by Kisch Global Limited, United Kingdom.

The Respondent is Abid Ali, Pakistan.

### **2. The Domain Name and Registrar**

The disputed domain name <microsoftkhp.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 April 8, 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 April 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 7, 2024.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on May 22, 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, is a leading developer and provider of personal-computer software systems and applications, cloud computing services, video games and other online services, with global operations through its subsidiaries, affiliates and licensees.

The Complainant holds numerous trademark registrations for MICROSOFT including in:

- United States, filed October 22, 1979, registered July 6, 1982, registration number 1200236;
- European Union, filed March 4, 1997, registered 25 March 25, 1999, registration number 000479956;
- International Registration, filed and registered on 27 May 2016, registration number 1318242, designated inter alia for Bosnia and Herzegovina, Bhutan, Colombia, Montenegro, Russian Federation, San Marino;
- Pakistan, where the Respondent is apparently located, filed February 20, 1985, registered February 20, 1985, registration numbers 85496 and 85497.

The registrations have been duly renewed and are still valid and will hereafter jointly be referred to in singular as the "Trademark".

According to the information provided by the Registrar, the disputed domain name has been registered on October 1, 2023. The disputed domain name is linked to a website in English and in Urdu purporting to be a Microsoft computer and English language institute. More particularly, the website is allegedly selling and offering various courses under the name Microsoft Institute.

#### **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 since its inception in 1975, the Complainant has remained a consequential company which adapts to technological paradigm shifts to enable digital transformation throughout the world. The Complainant is creating the platforms and tools, powered by artificial intelligence, that deliver better, faster, and more effective solutions to support small and large business competitiveness, improve educational and health outcomes, grow public-sector efficiency, and empower human ingenuity. The Complainant's portfolio of service and product offerings have been almost exclusively distributed through the Complainant's official stores and websites and selected authorized distributors and retailers. Today, the Microsoft products are used by approximately 1.4 billion consumers in around 190 countries across the world. As a result of substantial investment and extensive international sales and marketing activities, the Microsoft brand has achieved considerable international success and reputation.

The disputed domain name is linked to a website purporting to be a Microsoft computer and English language institute, that is allegedly selling and offering various courses.

The website is clearly purporting to be an official and authorized online distributor, partner or institute of the Complainant in Pakistan, by using the Trademark in the disputed domain name together with the non-distinctive additions "khp".

The website is prominently using the Trademark at the top of the website, being a location where users/relevant consumers usually expect to find the name of the website and/or the name of the provider of the website. Any user/relevant consumer being confronted with the disputed domain name and the website provided thereunder will usually expect to find the name of the website and/or the name of the provider of the website.

In addition to using the Trademark without the Complainant's authorization, the Respondent has reproduced an earlier version of the Complainant's Microsoft logo (which was used during the period of 1980–1982) in its logo.

The website does not show any details regarding the provider of the website, leaving the internet user under the false impression that the website, is that of the Complainant or that it is connected to that of the Complainant or one of its official distributors, partners, or institutes, which it is not.

At the bottom of the website, the following copyright notice appears: "Copyright © 2023 - Microsoft Institute. All rights reserved." This notice creates the false impression of an affiliation with the Complainant and/or that the website is authorized by or originates from the Complainant and/or the courses are authorized Microsoft offerings of the Complainant, which is untrue. This clearly signals an intention on the part of the Respondent to obtain an unfair commercial gain by misleading consumers or tarnishing the Trademark.

Importantly, the provider of the website is using the Complainant's MICROSOFT trademark in its name in circumstances where the provider of the website is not known to the Complainant, nor is it authorized to use the Trademark.

The Complainant first alleges that the disputed domain name is confusingly similar to its Trademark as it entirely incorporates its Trademark, with the addition of the non-distinctive "khp". The disputed domain name will therefore likely be associated with the Trademark. Any internet user when visiting a website provided under the disputed domain name will reasonably expect to find a website commercially linked to the Trademark.

The Complainant has made a prima facie case that the Respondent lacks any right or legitimate interest in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its Trademark or to register a domain name incorporating its MICROSOFT Trademark (or a domain name which will be associated with this trademark).

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent's behavior shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the Trademark owned by the Complainant.

The Complainant finally considers that the Respondent was obviously aware of its Trademark when it registered the disputed domain name. The above-described use made of the disputed domain name further clearly demonstrates that the disputed domain name is being used in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant prove each of the following three elements in order to succeed in its Complaint:

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

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

#### **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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other characters, here "khp", may bear on assessment of the second and third elements, the Panel finds the addition of such letters characters does not prevent a finding of confusing similarity between the disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds 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.

The disputed domain name leads to a website that is purporting to be an official and authorized online distributor, partner or institute of the Complainant in Pakistan, by using the Trademark in the disputed domain name, together with the addition of the letters "khp", as well as on its website. Therefore, the nature of the

disputed domain name, comprising the Complainant's trademark and an additional term, indicates an awareness of the Complainant and its Trademark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests. The Respondent clearly misleads the consumers and diverts them to his website, in order to create a commercial gain for himself. Such use cannot constitute bona fide commercial use, sufficient to legitimize any rights and interests the Respondent might have in the disputed domain name.

The Panel finds 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.

In the present case, the Panel also notes that the MICROSOFT trademark is, and has been found by previous UDRP panels to be, an internationally famous and distinctive mark, long before the Respondent registered the disputed domain name. *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) (finding that the Complainant's MICROSOFT mark is "well-known throughout the world"). See also *Microsoft Corporation. v. Cedric Thompson*, WIPO Case No. [D2004-1097](#) (noting that several previous panels have concluded that the Complainant's MICROSOFT trademark is internationally famous and "readily" subscribing to these findings) (citations omitted); *Microsoft Corporation v. Wayne Lybrand*, WIPO Case No. [D2005-0020](#) (noting that the "uncontested evidence indicates plainly that MICROSOFT is a famous mark, and indeed, several previous UDRP panels have recognized it as such").

Bad faith requires the Respondent to be aware of the Complainant's Trademark. In the present case, the Trademark is an internationally famous and distinctive mark with a strong reputation. Moreover, taking into account the fact that the website attached to the disputed domain name reproduces the Trademark and (former) logo, the Panel finds that the Respondent was aware of the Complainant's Trademark when he registered the disputed domain name.

The use of the disputed domain name purportedly offering English and computer courses under the name of Microsoft Institute makes it ideally suited to misleading the Internet users as to its source, sponsorship or affiliation with the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant. Therefore, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of its website pursuant to paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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, <microsoftkhp.com>, be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: June 5, 2024