

## **ADMINISTRATIVE PANEL DECISION**

Microsoft Corporation v. Iota Andromedae  
Case No. D2024-2040

### **1. The Parties**

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

The Respondent is Iota Andromedae, United States.

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

The disputed domain name <girlwhoexcel.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 16, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 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 May 23, 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 May 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on June 26, 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's business includes, among other things, the provision of spreadsheet software. It owns the trademark EXCEL which it has registered in a number of countries, including the United States (e.g., Reg. No. 2,942,050, registered on April 19, 2005, for, among other things, spreadsheet software). The Complainant also enjoys the benefits of registration of a design mark it uses on and in connection with its Excel spreadsheet software, described in United States Reg. No. 5063040 (registered on October 18, 2016) as consisting of a stylized depiction of a green rectangle and an adjacent rectangular image including a grid of rectangles featured in green and white.

According to the Whois records, the disputed domain name was registered on January 5, 2022. The Respondent has used the disputed domain name to operate an ecommerce website that offers spreadsheet templates for sale. The offered templates include products that one can use with the Complainant's Excel spreadsheet program as well as products that one can use on other online spreadsheet programs. The website uses the Complainant's EXCEL work mark and also uses a design mark that resembles the Complainant's design mark, inasmuch as the design mark the Respondent uses is comprised of a green rectangle and an adjacent rectangular image including a grid of rectangles featured in green and white.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. 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. Id. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the EXCEL mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the EXCEL mark in its entirety with the words “girl” and “who”, which do not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s EXCEL mark. See [WIPO Overview 3.0](#), section 1.8. The EXCEL mark remains recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has met this first element under the Policy.

## **B. Rights or Legitimate Interests**

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Complainant has not licensed or otherwise permitted the Respondent to use any of the Complainant’s trademarks or to register a domain name incorporating its EXCEL trademark, (2) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name but instead intends to obtain an unfair commercial gain with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant, and (3) the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

Furthermore, the nature of the disputed domain name, incorporating the Complainant’s widely-known EXCEL trademark, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. *Columbia Insurance Company v. Name Redacted*, WIPO Case No. [D2022-0528](#); [WIPO Overview 3.0](#), section 2.5.1.

Moreover, the Respondent does not appear to be a reseller of the Complainant’s goods or services and thereby using the disputed domain name in a manner that would be appropriate under the Policy. The case of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) provides a test (the “Oki Data” Test) that assists a panel in determining whether a disputed domain name registered for purposes of reselling a complainant’s goods or services gives rise to a respondent’s rights or legitimate interests in the disputed domain name. In this situation, the Respondent is not merely a provider of the Complainant’s goods and services, but is a third party offering products to be used in connection with the Complainant’s software. And in any event – even if the Oki Data Test would be appropriate in this situation – the Respondent’s use of the disputed domain name and operation of a website there do not pass the test. The website does not disclose the nature of the relationship, or lack thereof, with the Complainant. And the website offers products unrelated to the Complainant’s goods, including spreadsheet bundles for use with a product competitive to the Complainant’s Excel product.

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

### **C. Registered and Used in Bad Faith**

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt 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 a product or service on [the respondent's] website or location".

The Panel finds that the Panel specifically targeted the Complainant and its EXCEL mark when it registered and used the disputed domain name, and that this targeting is sufficient to show bad faith registration and use. The disputed domain name prominently features the EXCEL mark, and the website associated with the disputed domain name displays the EXCEL mark and a very similar representation of the Complainant's green rectangle logo. The Panel finds that the Respondent's efforts show an effort to unfairly trade off the goodwill of the Complainant's mark to provide the Respondent's own goods in a manner prohibited by the Policy – including goods used for software products that are competitive to the Complainant's products.

The Respondent's bad faith is also reinforced by its use of a privacy service to obscure its identity. See *Pet Plan Ltd v. Mohammed Nahhas*, WIPO Case No. [D2021-1964](#).

For these reasons, the Panel finds that the Complainant has established this third element under 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 <girlwhoexcel.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: July 17, 2024