

## **ADMINISTRATIVE PANEL DECISION**

MicroBilt Corporation v. Greg J Michalko  
Case No. D2024-2212

### **1. The Parties**

The Complainant is MicroBilt Corporation, United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Greg J Michalko, United States.

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

The disputed domain name <microbilt.org> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On May 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 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 amendment to the Complaint on June 3, 2024.

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 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on June 27, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on July 4, 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 company with headquarters in New Jersey, United States, was founded in 1978 as Equipment Resources Incorporated and changed its name to MicroBilt in 1984. It provides consumer reporting services to financial institutions in connection with the provision of credit and financial services.

The Complainant was the proprietor of United States Trademark Registration No. 1356329 for MICROBILT (device mark), registered on August 27, 1985 with a use in commerce date in 1984 for goods in class 9. This registration was cancelled on June 10, 2006 for failure to file documents required to maintain the registration. The Complainant does not provide evidence of any other trademark registrations, but, as will be discussed below, claims unregistered trademark rights in the MICROBILT mark.

The Complainant operates its primary business website at the domain name <microbilt.com>, which it registered in 1993.

The disputed domain name was registered on January 9, 2024. At the time of this Decision, it did not resolve to an active website. The record reflects that it previously resolved to a website that mimicked the Complainant's website and featured the Complainant's MICROBILT mark. This website was disabled in March 2024 after the Complainant sent a cease-and-desist letter to the website hosting provider.

#### **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.

The Complainant contends that it has unregistered trademark rights in the MICROBILT mark for the following reasons: it has used the MICROBILT mark in commerce since 1984. The USPTO registration was cancelled due to an oversight rather than because the Complainant was no longer using the mark. The Complainant has operated its business website at the domain name <microbilt.com> since 1993; this website features the MICROBILT mark. The Complainant's business is well-established, approximately 165 employees with offices in four locations, serving 5,000 customers, and generating approximately USD 25 million in revenue annually. The Complainant has promoted its MICROBILT mark and the Complainant's business and mark have been reported in the press. Finally, the Respondent has deliberately targeted the Complainant and its mark.

The Complainant's other contentions may be summarized as follows: the disputed domain name is identical to the Complainant's mark. The Respondent has no connection to the Complainant and has no rights in the MICROBILT mark. The Respondent used the disputed domain name for a website that mimicked that of the Complainant in layout, visual appearance and content.

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

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

## 6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain names are 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 Respondent has registered and is using the disputed domain names in bad faith.

Under 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”.

### 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 Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Panel notes in particular the evidence provided by the Complainant that the mark has been used in connection with the goods and services provided by the Complainant since 1984. The Complainant has provided evidence of the distinctiveness of the mark. Finally, the fact that the Respondent has targeted the Complainant’s mark supports a finding that the MICROBILT mark has source-identifying capacity. [WIPO Overview 3.0](#), section 1.3.

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

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 Panel notes there is no evidence that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent has been commonly known by the disputed domain name. There is no evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name. The use of the disputed domain name reflected in the evidence does not support an inference that the Respondent was engaged in a legitimate business connected to the disputed domain name. Under these circumstances, the Panel finds that such use does not establish rights or legitimate interests. Moreover, the composition of the disputed domain name, which is identical to the Complainant's MICROBILT trademark, carries a high risk of implied affiliation to the Complainant that in the case circumstances does not constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered approximately 40 years after the Complainant began using its MICROBILT mark. The disputed domain name reflects the Complainant's mark in its entirety and therefore implies a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered in bad faith. [WIPO Overview 3.0](#), section 3.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The record contains evidence that the disputed domain name resolved to a website mimicking that of the Complainant featuring the Complainant's mark and purporting to offer services identical to those offered by the Complainant. Such conduct is clearly indicative of bad faith use of the disputed domain name. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <microbilt.org> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: July 18, 2024