

## **ADMINISTRATIVE PANEL DECISION**

Microsoft Corporation v. Luciano Mallmann  
Case No. D2024-2240

### **1. The Parties**

The Complainant is Microsoft Corporation, United States of America ("United States" or "U.S."), represented by D.M. Kisch Inc., South Africa.

The Respondent is Luciano Mallmann, Brazil.

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

The disputed domain name <lojamicrosoft.net> ("Disputed Domain Name") 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 May 31, 2024. On June 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 4, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent's default on June 27, 2024.

The Center appointed Tommaso La Scala as the sole panelist in this matter on July 1, 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 is a well-known U.S. technology corporation, leader in the development of personal-computer software systems and applications, cloud computing services, video games and other online services and it has a global presence.

The MICROSOFT trademark has been registered in several jurisdictions, including in Brazil (where the Respondent is located), under Registration No. 816411417, registered on June 15, 1993.

The Complainant also owns, among others, the domain name <microsoft.com>, registered in 1991 and connected to the Complainant's official website.

The Disputed Domain Name was registered on February 21, 2023, and seems to be currently inactive, even though it previously resolved to a website allegedly selling and offering the Complainant's products, as well as competing third party products of other commercial origin.

#### **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 is the owner of several trademark registrations in different jurisdictions worldwide that consist of the mark MICROSOFT. The Disputed Domain Name fully incorporates such trademark with the mere addition of the word "loja" (meaning "store" in Portuguese) and is therefore confusingly similar to the Complainant's mark.

The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant confirms it has never, licensed, or in any way authorized the Respondent to register or use the MICROSOFT trademark in any manner. The Disputed Domain Name was registered and is being used in bad faith, since the attempt of letting Internet users believe there is a connection between the Complainant's business activity and the Respondent's one cannot be considered a conduct in good faith, especially considering the Respondent is offering also goods manufactured by the Complainant's direct competitors.

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

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

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

##### **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 established rights to the MICROSOFT trademark, as demonstrated by its registrations and widespread continued use. The Disputed Domain Name is confusingly similar to the Complainant's mark because it contains the entirety of the Complainant's mark with the addition of the term "loja" (meaning

“store” in Portuguese), which does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s registered trademark.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark 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.

Based on the available record, 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 the 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.

The Complainant has shown that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain. Rather, the Respondent was trying to impersonate the Complainant or an authorized reseller of the Complainant by reproducing - on the website to which the Disputed Domain Name resolved - the Complainant’s official trademarks, images of its products, and information. The Panel notes the composition of the Disputed Domain Name, which carries a risk of implied affiliation with the Complainant ([WIPO Overview 3.0](#), section 2.5.1) and that no disclaimer or notice on the relationship (or lack thereof) between the Complainant and the Respondent was displayed on the website. Panels have categorically held that the use of a domain name for illicit activities (such as impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel further notes that the website associated with the Disputed Domain Name not only referred to the Complainant’s products but was also apparently offering competing products of other commercial origin, which also prevents a finding of rights or legitimate interests on behalf of the Respondent. [WIPO Overview 3.0](#), section 2.8.1.

The Respondent did not reply to the Complainant’s allegations; therefore, the Respondent failed to establish rights or legitimate interests under the Policy.

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.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Disputed Domain Name was registered long after the Complainant first started using and registered its well-known MICROSOFT trademark. Given the confusing similarity between the Disputed Domain Name and the Complainant's mark, it is clear that the Respondent was aware of the Complainant and its MICROSOFT mark at the date of registration of the Disputed Domain Name and registered it in order to take unfair advantage of it.

Indeed, by reproducing the Complainant's registered trademark in the Disputed Domain Name and in the title of the corresponding website, the Respondent was suggesting to Internet users that the Disputed Domain Name is somehow connected with the Complainant, which is not true. This suggestion is even increased by the Respondent's use of the Complainant's official product images and registered trademarks, both accompanied by a vague copyright notice claiming the copyright for the website and its contents.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a 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. Based on the evidence presented, the Panel finds that the Respondent's use of the Disputed Domain Name constitutes bad faith under Policy, paragraph 4(b)(iv).

Furthermore, UDRP panels have categorically held that the use of a domain name for illegal activity (here, impersonation/passing off) constitutes bad faith (see [WIPO Overview 3.0](#), section 3.1.4). In addition, the fact that the website associated with the Disputed Domain Name was also offering competing products from third parties also contributes to a finding of bad faith as such conduct disrupts the Complainant's business.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy. Noting the circumstances of the case, the current non-use of the Disputed Domain Name does not change the Panel's finding on bad faith (see [WIPO Overview 3.0](#), section 3.3).

The Panel finds the third element of the Policy has been established.

### **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 <lojamicrosoft.net> be transferred to the Complainant.

*/Tommaso La Scala/*

**Tommaso La Scala**

Sole Panelist

Date: July 12, 2024