

## **ADMINISTRATIVE PANEL DECISION**

Microsoft Corporation v. Nidal Elkadri  
Case No. D2024-2477

### **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 Nidal Elkadri, Canada.

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

The disputed domain name <xboxgaming.com> is registered with DropCatch.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 confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint (also naming TC-651892 as the registrant “handle”) 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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 23, 2024.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on August 2, 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, Microsoft Corporation, is an American multinational technology company, leading developer and provider of personal-computer software systems and applications, cloud computing services, video games and other online services, with world-wide operations through its subsidiaries, affiliates and/or licensees.

For its technology software, services and products, the Complainant owns numerous trademark registrations in several jurisdictions for XBOX, including the following.

International Trademark Registration No. 1386032 XBOX, registered on June 5, 2017, designating many countries;

International Trademark Registration No. 1546745 XBOX (Devise), registered on May 18, 2020, designating several countries, including Canada;

United States Trademark Registration No. 2646465 XBOX, registered on November 5, 2002.

The Complainant's portfolio of service and product offerings (collectively referred to "Xbox Offerings") are used by approximately 120 million consumers in around the world.

The disputed domain name was registered on May 28, 2021, and resolves to a webpage that provides the designation "This domain address is for sale. Email: [...]" and also refers and/or includes sponsored hyperlinks which redirect to various third party 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 Respondent is not known or in any way related to the Complainant and is not authorized to use the XBOX trademarks.

The Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

##### **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 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 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.

Although the addition of other terms, here “gaming”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark 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 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.

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademark XBOX mentioned in section 4 above (Factual Background) when it registered the disputed domain name on May 18, 2021. By that time, the Complainant had registered and widely used the trademark including in Canada.

The Panel also finds that by registering the disputed domain name which includes the Complainant’s trademark XBOX in its entirety the Respondent was targeting the Complainant and its business. The addition of the descriptive term “gaming” only contributes to confuse Internet users and leads them to think that the Respondent’s website belongs to or is endorsed by the Complainant, as is the offer to sell the disputed domain name with the intention to capitalize on the fame of the Complainant’s trademark for its own benefit.

Further, the fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name, the nature of the disputed domain name, and the use of the disputed domain name to resolve to a website that refers and/or includes sponsored hyperlinks which redirect to various third party websites are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent registered and is using the disputed domain name 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 <xboxgaming.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: August 16, 2024