

## **ADMINISTRATIVE PANEL DECISION**

Microsoft Corporation v. Svetlana Ivanova  
Case No. D2024-2483

### **1. The Parties**

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

The Respondent is Svetlana Ivanova, Russian Federation.

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

The disputed domain name <playxbox.com> (the “Disputed Domain Name”) is registered with Fiducia LLC, Latvijas Parstavnieciba (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 18, 2024. On June 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 12, 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 July 12, 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 July 16, 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 July 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on August 27, 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 corporation founded in 1975. The Complainant's portfolio of goods and services offerings include video games, consoles, controllers, headsets, accessories and subscription services under the XBOX brand.

The Complainant is the owner of numerous trademarks for XBOX including the following:

- XBOX, international word mark (including the Russian Federation as designated country) registration number 1386032 on June 5, 2017, in classes 35, 38, 41, 42, 45; and
- XBOX, United States of America word mark registration number 2646465, on November 5, 2002, in class 9.

The Disputed Domain Name was registered on April 4, 2011. According to the Complainant evidence, the Disputed Domain Name resolved to a parking page offering the Disputed Domain Name for sale. The parking page requested to provide personal and contact details to obtain details on the purchase price of the Disputed Domain Name. The parking page also mentioned that "offers under \$1,000 US are usually not considered". The Panel observes that the Disputed Domain Name currently resolves to an inaccessible website.

#### **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 Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no legitimate interests in respect of the Disputed Domain Name as:

- the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its XBOX trademark; and
- the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Respondent knew of the Complainant's XBOX trademark when registering the Disputed Domain Name;
- the Respondent registered and used the Disputed Domain Name with the intention to attract, for commercial gain, Internet users to the website linked to the Disputed Domain Name (the parking page) by creating a likelihood of confusion with the Complainant's registered XBOX trademark as to the source, sponsorship, affiliation, or endorsement of the parking page, the website or location or of a product or service on its website or location;

- the Respondent registered and used the Disputed Domain Name with an intention of obtaining personal details from Internet users;
- the Respondent is suggesting to Internet users visiting the website linked to the Disputed Domain Name (the parking page), that the Complainant is the source of the parking page;
- the Respondent's passive holding and general offer for sale of the Disputed Domain Name constitutes evidence of the Respondent's bad faith; and
- the Respondent is using a privacy protection service to hide its true identity.

## **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.

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 observes that the entirety of the XBOX mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of another term – here, "play" – 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.

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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 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 that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Svetlana Ivanova". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant's XBOX trademark in its entirety and merely adds the descriptive term "play". In the Panel's view, this term can be easily linked to the Complainant's video game business, especially given the widespread use and reputation of the Complainant's XBOX trademark. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

According to the Complainant's evidence, the Disputed Domain Name appeared to resolve to a parking page offering the Disputed Domain Name for sale. The parking page also mentioned that "offers under \$1,000 US are usually not considered". Given the nature of the Disputed Domain Name (the Disputed Domain Name carries a risk of implied affiliation with the Complainant), the Panel finds that the offering for sale does not constitute a legitimate noncommercial or fair use of the Disputed Domain Name. [WIPO Overview 3.0](#), section 2.5.1.

The Panel observes that the Disputed Domain Name currently resolves to an inactive webpage. Considering the circumstances of the case, the Panel finds that this does not amount to any legitimate noncommercial or fair use or use in connection with a bona fide offering of goods and services either.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

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 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 finds that the following circumstances serve as indication of bad faith registration and use:

- the Disputed Domain Name incorporates the Complainant's well-known XBOX trademark in its entirety and combines it with a term directly referring to the Complainant's video game business;

- some of the Complainant's trademarks predate the registration of the Disputed Domain Name by more than 8 years; and
- the Respondent did not take part in the administrative proceedings.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name redirecting to a inactive page does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, 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 <playxbox.com> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: September 10, 2024