

ADMINISTRATIVE PANEL DECISION

Microsoft Corporation v. park taewon / 박태원
Case No. D2024-2515

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 park taewon / 박태원, Republic of Korea (“Korea”).

2. The Domain Name and Registrar

The disputed domain name <xboxgamer.com> is registered with Inames Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint, in English, was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 20, 2024, the Center transmitted to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2024, the Registrar transmitted to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On June 21, 2024, the Center informed the Parties, in both English and Korean, that the Complaint was submitted in English, and that according to the Registrar, the language of the registration agreement for the disputed domain name is Korean. On June 21, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not timely submit any comment on the Complainant’s submission.

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, in both English and Korean, formally notified the Respondent of the Complaint, and the proceeding commenced on July 1, 2024. In accordance with the Rules, paragraph 5, the due date for the Response was July 21, 2024. On July 15, 2024, the Respondent sent two email communications, with identical content, to the Center. (The full content is provided in Section 5.B. herein.) Accordingly, the Center, again in both English and Korean, notified the Parties of the commencement of panel appointment process on July 29, 2024.

The Center appointed Professor Ilhyung Lee as the sole panelist in this matter on August 6, 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, a corporation established in the United States, identifies itself as “a leading developer and provider of personal-computer software systems and applications, cloud computing services, video games and other online services, with global operations through its subsidiaries, affiliates and/or licensees”. The Complainant owns a large number of XBOX marks for its video games products, which are registered in dozens of countries, including the United States (among others, registration number 2646465, registered on November 5, 2002), and Korea (among others, registration number 4005433160000, registered on March 15, 2003). The Complainant has also registered the domain name <xbox.com>, on December 18, 1996.

The disputed domain name was registered on July 24, 2014. The disputed domain name resolves to an inactive website. Internet users who resort to the disputed domain name are taken to a Registrar-parked page that reads (in English text):

“xboxgamer.com
This domain is registered, but may still be available.
Get this domain”

5. Parties’ Contentions

A. Complainant

The Complainant contends principally that: (i) the disputed domain name is identical or confusingly similar to a 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. In addition, the Complaint states, inter alia:

“Today, the Xbox Offerings are used by approximately 120 million consumers in around the world. As a result of substantial investment and extensive international sales and marketing activities, the Xbox brand has achieved considerable international success and reputation.”

“The Respondent is not known or in any way related to the Complainant and is not authorized to use the XBOX trademarks.”

“Any user being confronted with the Disputed Domain Name and/or the Parking Page [to which the disputed domain name resolves] ... will usually expect to find the name of the website/parking page and/or the name of the provider of the website/parking page. The Parking Page is prominently using the Complainant’s registered XBOX trademark at the top of the Parking Page, which strengthens the false impression of an affiliation with the Complainant.”

“The Parking Page ... leav[es] ... the false impression of an affiliation with the Complainant and/or that the Parking Page is authorized by or originates from the Complainant who is the proprietor of the XBOX trademarks and/or that the Complainant authorizes any offers to purchase the Disputed Domain Name ..., which is untrue.”

“This clearly signals an intention on the part of the Respondent to obtain an unfair commercial gain by misleading consumers or tarnishing the trademark owned by the Complainant.”

B. Respondent

The Respondent sent two email communications, in English, on July 15, 2024, stating in both:

“Dear Sir,

We are embarrassed and sorry to receive this email.
We don't know who filed the complaint with the WIPO,
We don't even remember acting hostile to one of the complaints.
They didn't give us any words before filing the complaint.

We just bought and held the xboxgamer.com domain 10 years ago in a legitimate way.
We acknowledge that we tried to sell the xboxgamer.com domain at a reasonable price.

The xboxgamer.com domain is registered in South Korea, and we are small business owners in South Korea.

If possible, we would like to receive the mail in Korean.

Regards, Taewon.”

Other than its transmissions to the Center on July 15, 2024, the Respondent did not reply to the Complainant's contentions. The Respondent did not file a formal Response.

6. Discussion and Findings

Initially, the Panel must address the language of the proceeding.

Paragraph 11(a) of the Rules provides that the language of the registration agreement shall be the language of the administrative proceeding, unless otherwise agreed by the parties or specified in the registration agreement. This provision also states that the determination of the proper language is “subject to the authority of the Panel ..., having regard to the circumstances of the administrative proceeding”. Here, although the language of the registration agreement is Korean, the Complainant requests that English be the language of the proceeding.

After receiving the Complaint in English, the Center notified the Parties, in both English and Korean, of the Center's procedural rules regarding the language of the proceeding. In requesting that English be the language of the proceeding, the Complainant contends that the Respondent is capable of communicating in English. The Center informed the Respondent, in both English and Korean, that it may object timely to a proceeding conducted in English. The Respondent did not respond to the Center's notification directly, but instead stated in a later transmission, in English, “If possible, we would like to receive the mail in Korean.”

As noted, the Panel has discretion to depart from the language of the registration agreement, taking into account all relevant circumstances. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1. Here, the disputed domain name, the text on the site to which it resolves, and the Respondent's statements regarding the case to the Center on July 15, 2024, are all in English. The Panel decides that English is the language of the proceeding. At this late date, requiring the proceeding to be in Korean would lead to unnecessary delay and costs.

Turning to the merits, the Complainant must satisfy each of the three elements of paragraph 4(a) of the Policy.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name <xboxgamer.com> is identical or confusingly similar to a mark in which the Complainant has rights (XBOX), under paragraph 4(a)(i) of the Policy.

The Complainant's mark appears prominently in the disputed domain name. The addition of the term "gamer" does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

The Top-Level Domain ("TLD") ".com", a technical registration requirement, is disregarded in the consideration of this element. [WIPO Overview 3.0](#), section 1.11.1.

The first element has been established.

B. Rights or Legitimate Interests

The Complainant states that it has not authorized the Respondent to use the XBOX mark and has met its initial burden of making a prima facie showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden shifts to the Respondent to demonstrate any such rights or legitimate interests. Paragraph 4(c) of the Policy provides a non-exhaustive list of circumstances that may demonstrate the Respondent's rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1.

The Panel is unable to ascertain any evidence that would demonstrate the Respondent's rights or legitimate interests in the disputed domain name, as described in the Policy, or otherwise. Without any supporting evidence, the Respondent's statement that it "bought and held" the disputed domain name "in a legitimate way" is lacking.

The second element has also been established.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the disputed domain name "has been registered and is being used in bad faith". Paragraph 4(b) provides a non-exhaustive list of circumstances that can satisfy this element. Other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Here, the disputed domain name resolves to a Registrar-parked page. Instructive in the Panel's consideration are the widely-known nature of the Complainant's mark, in Korea as well as the United States, and the absence of any good faith use to which the disputed domain name may be put, despite the Respondent's protestations. The Panel finds that, considering the overall circumstances of this case, there is a sufficient showing of the bad faith requirement.

The third element 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 <xboxgamer.com> be transferred to the Complainant.

//Ilhyung Lee/

Ilhyung Lee

Sole Panelist

Date: August 19, 2024