Panel Decision for dispute CAC-ADREU-006235

Case number	CAC-ADREU-006235
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Domain names	microsot.eu, microoft.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	Microsoft B.V.

Respondent

Organization	N/A

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel has not received notification of other legal proceedings pending or decided in respect of the domain name presently disputed.

FACTUAL BACKGROUND

According to the Complainant's submissions, it is the Netherlands subsidiary of the United States company Microsoft Corporation, established in 1975. It is well known internationally as a leading producer of software for computers and other devices, including the Windows operating system, and electronic hardware.

The Complainant utilises the Internet extensively for the provision of information, software, security updates and other things to its customers, and is the holder of numerous domain names including <microsoft.eu>. <microsoft.com>, <microsoft.net>, <microsoft.org>, <microsoft.co.uk>, <microsoft.de>, <microsoft.be>, <microsoft.fr> and <microsoft.es>, the last being relevant to the fact that the address given by the Respondent is in Spain.

Nothing of significance is known about the Respondent except for the contact details provided for the registration of the disputed domain names. The disputed domain names were registered on February 19, 2010.

A. COMPLAINANT

The Complainant contends that its parent company owns a large number of trade marks world-wide that incorporate the word MICROSOFT, including the following European Community trade marks and Spanish trade marks:

CTM, MICROSOFT, No. 000330910 filed on 22 July 1996 for classes 35, 41 and 42;
CTM, MICROSOFT, No. 000479956 filed on 4 March 1997 for class 9;
CTM, MICROSOFT, No. 002850634 filed on 13 September 2002 for class 25;
CTM, MICROSOFT, No. 003212198 filed on 4 June 2003 for classes 36, 37 and 40;
CTM, MICROSOFT, No. 003500824 filed on 21 November 2003 for class 16;
Spanish TM, MICROSOFT, No. M1653117 filed on 01 April 2002 for class 41;
Spanish TM, MICROSOFT, No. M1653118 filed on 16 April 2002 for class 42;
Spanish TM, MICROSOFT, No. M0998032 filed on 16 February 2004 for class 9.

The Complainant has produced documentary evidence signed by the Assistant Secretary of its parent company Microsoft Corporation attesting to the Complainant's right to bring the present proceeding as a non-exclusive licensee of the Microsoft Corporation trade marks.

The Complainant says that the name MICROSOFT is highly distinctive, has achieved the status of a well-known trade mark, and has a valuation of about USD 69 billion.

The Complainant further contends that the disputed domain names are confusingly similar to its name MICROSOFT, the directory level ".eu" being of no significance. The disputed domain name <microsot.eu> differs from MICROSOFT only by the omission of the letter "F", and <microoft.eu> differs only by the omission of the letter "S". The changed terms that result have no independent meaning and constitute attempted typo-piracy, whereby Internet users who make a typing mistake may be drawn to an Internet presence they did not intend to visit.

The Complainant further contends that the disputed domain names have been registered by the Respondent without rights or legitimate interests in the names. The Respondent is not affiliated with the Complainant in any way, has never been authorised to use any of the Complainant's trade marks, and has no recorded rights in the term MICROSOFT.

The Complainant says that within the meaning of paragraph B11(e) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules"), the Respondent has not used the disputed domain names or corresponding names in connection with an offering of goods or services, or made demonstrable preparation to do so; or been commonly known by the disputed domain names; or made a legitimate and non-commercial or fair use of the disputed domain names without intent to mislead consumers or harm the reputation of a name in which the Complainant's right is recognized or established by national law and/or Community law.

The Complainant says that the disputed domain names were registered on February 19, 2010, being some 15 years after the date of registration of Microsoft's first Community Trade Mark and more than 30 years after the inception of Microsoft. It is inconceivable that the Respondent did not have the Complainant in mind when he registered the disputed domain names or that he did not intend to profit in some way from the Complainant's rights.

The Complainant has produced screen captures taken on May 9, 2011, and November 19, 2011, showing that the disputed domain names resolved to websites that were link farms, offering visitors commercial links to third party websites that sold products and services. It is contended that this constitutes a bad faith appropriation of Microsoft's intellectual property rights by trading on the MICROSOFT brand in order to divert internet users by confusion. It is submitted that the Respondent is responsible for sponsored advertising links placed on his websites by a third party.

On September 9, 2011, a cease and desist letter was sent by the Complainant to the Respondent. By February 1, 2012, the websites of the disputed domain names had been changed to display dummy text of no consequence (lorem ipsum). Notably this change happened after notification of the grounds of the dispute to the Respondent.

In correspondence following the cease and desist letter, the Respondent on November 19, 2011, offered to sell the disputed domain names to the Complainant for EUR 5000.00 each. The offer was declined by the Complainant.

The Complainant has cited a number of previous decisions under the UDRP or the .eu ADR Rules that it wishes the Panel to consider as possible precedent.

The Complainant requests the transfer to itself of the disputed domain names.

B. RESPONDENT

The Respondent did not file a formal response.

DISCUSSION AND FINDINGS

WHETHER THE DOMAIN NAMES ARE CONFUSINGLY SIMILAR TO A NAME IN WHICH THE COMPLAINANT HAS RIGHTS

The Panel is satisfied by the evidence produced that for the purposes of ADR Rules B11(d)(1)(i), the Complainant is the holder of registered trademarks in the word MICROSOFT, in respect of which a right is recognized or established by the national law of a Member State and Community law.

The disputed domain names are <microsot.eu> and <microoft.eu>. The Panel finds that, given the fame of the name and trademark MICROSOFT, each of the disputed domain names is confusingly similar to it within the meaning of ADR Rules B11(d)(1)(i).

WHETHER THE RESPONDENT HAS RIGHTS IN THE DOMAIN NAMES

The Complainant has stated that is has not granted the Respondent any licence or permission to use the trademark MICROSOFT and that the Respondent cannot have any rights or legitimate interests in the disputed domain names.

The Respondent has been provided with the opportunity to demonstrate that he has rights or legitimate interests in the disputed domain names for the purposes of ADR Rules B11(d)(1)(ii). The Respondent has made no relevant submissions. Having reviewed all of the available evidence, the Panel is satisfied that the Respondent cannot realistically establish any rights or legitimate interests in the disputed domain names within the provisions of ADR Rules B11(e) or otherwise. Accordingly the Panel finds for the Complainant in the terms of ADR Rules B11(d)(1)(ii).

Findings for the Complainant in respect of ADR Rules B11(d)(1)(i) and B11(d)(1)(ii) are sufficient for a transfer of the disputed domain names to be ordered in accordance with Article 21 of Regulation (EC) No. 874/2004. It is not essential to make an alternative finding under ADR Rules B11(d)(1)(iii) as to whether the disputed domain names have been registered or are being used in bad faith, however the Panel will do so in the interests of completeness.

WHETHER THE DOMAIN NAMES HAVE BEEN REGISTERED OR USED IN BAD FAITH

According to the statements and documents submitted, before notification of the dispute to the Respondent, the websites to which the disputed domain names resolved were link farms, being websites that offered the visitor a selection of links to other websites. It may reasonably be concluded that the Respondent created this operation according to a standard industry model, known as click-through or pay-per-click, whereby the website operator, in this instance the Respondent, receives revenue in return for referrals to other websites. Thus the Respondent's operation was commercial. The click-through business model may be entirely legitimate and is widely used, for example, to subsidise an information website, or as a stand-alone business.

The click-through model depends crucially on the attraction of Internet visitors. It may reasonably be concluded that the Respondent has set out to attract visitors by confusion, based on the premise that a small proportion of the large number of Internet users seeking an authentic Microsoft website may accidentally omit one letter when typing the name. Some users may thereby be misled to the Respondent's websites at <microsot.eu> or <microoft.eu> by a device known as typo-piracy. The Respondent's activity is found to constitute bad faith use within the contemplation of ADR Rules B11(f)(4). The Panel finds on the balance of probabilities that the disputed domain names were registered for that purpose, constituting bad faith registration in terms of ADR Rules B11(d)(1)(iii).

Paragraph B11(f)(1) of the ADR Rules would provide for a finding of bad faith registration or use in circumstances indicating that a disputed domain name was registered primarily for the purpose of selling it to the Complainant. Documentary evidence reveals that the Respondent has also registered domain names comprising mis-spellings of the well-known Internet website Wikipedia. It may be inferred that the Respondent has some familiarity with the Internet and acted with intent. The Respondent must have realised the inevitability that the Complainant would intervene sooner rather than later, and the Respondent's offer at that stage to sell the disputed domain names for EUR 5000.00 each is sufficient for the Panel to find, on the balance of probabilities, that an eventual attempted sale to the Complainant was a primary intention of the Respondent. Bad faith registration and use are further found in the terms of ADR Rules B11(f)(1).

DECISION

For all the foregoing reasons, in accordance with paragraph B12 of the Rules, the Panel orders that the domain names <microsot.eu> and <microoft.eu> be transferred to the Complainant.

PANELISTS

Name	**Dr. Clive Trotman**

DATE OF PANEL DECISION 2012-05-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain names: <microsot.eu>; <microoft.eu>.

II. Country of the Complainant: The Netherlands, country of the Respondent: Spain

III. Date of registration of the domain names: 19 February, 2010.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Spain, reg. No. M1653117, for the term MICROSOFT, registered on 1 April 2002
2. word trademark registered in Spain, reg. No. M1653118, for the term MICROSOFT, registered on 16 April 2002
3. word trademark registered in Spain, reg. No. M0998032, for the term MICROSOFT, registered on 16 February 2004
4. word CTM, reg. No. 000330910, for the term MICROSOFT, registered on 22 July 1996
5. word CTM, reg. No. 000479956, for the term MICROSOFT, registered on 4 March 1997
6. word CTM, reg. No. 002850634, for the term MICROSOFT, registered on 13 September 2002
7. word CTM, reg. No. 003212198, for the term MICROSOFT, registered on 4 June 2003
8. word CTM, reg. No. 003500824, for the term MICROSOFT, registered on 21 November 2003

V. Response submitted: No

VI. Domain names are confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Why the Complainant considers the Respondent to lack the rights and legitimate interests: Respondent has no relationship with Complainant and has not fulfilled any requirement under ADR Rules B11(e)
2. Rights or legitimate interests the Respondent claims to have: none
3. Does the Panel consider the Respondent to have no rights or legitimate interests: No rights/legitimate interest

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Why the Complainant considers the Respondent to have registered or use the domain names in bad faith: typo-piracy; intent to divert by confusion; intent to sell domain names to Complainant
2. How the Respondent rebuts the statements of the Complainant: no formal Response
3. Does the Panel consider the Respondent to have registered or used the domain names in bad faith: Yes

IX. Other substantial facts the Panel considers relevant: none

X. Dispute Result: Transfer of the disputed domain names

XI. Procedural factors the Panel considers relevant: none