

## DISPUTE RESOLUTION SERVICE

D00016124

### Decision of Independent Expert

Microsoft Corporation

and

Dallas

#### 1. The Parties:

Complainant: Microsoft Corporation  
One Microsoft Way  
Redmond  
WA  
98052  
United States

Respondent: Dallas  
Unit 47 12 South Bridge  
Edinburgh  
EH1 1DD  
United Kingdom

#### 2. The Domain Names:

microsoftedge.co.uk  
windows10mobile.co.uk  
windowsholographic.co.uk  
windowsmobile10.co.uk  
windowsten.co.uk

### **3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

22 June 2015 16:59	Dispute received
23 June 2015 14:06	Complaint validated
23 June 2015 14:13	Notification of complaint sent to parties
10 July 2015 02:30	Response reminder sent
15 July 2015 09:10	No Response Received
15 July 2015 09:10	Notification of no response sent to parties
23 July 2015 10:28	Expert decision payment received

### **4. Factual Background**

Founded in 1975, Microsoft is a worldwide leader in software and related services. It is the owner of the registered trade marks MICROSOFT and WINDOWS covering those goods and services. It has extensive goodwill in these marks.

The Domain Names all consist of the Complainant's distinctive and well known WINDOWS or MICROSOFT marks as prefixes coupled with suffixes that each directly refer to one of the Complainant's products in development and were registered after announcements of the names of the relevant products in the press. The Respondent owns a lot of domain names containing the famous marks of third parties, especially from the financial and technological sectors.

### **5. Parties' Contentions**

#### **Complainant**

The Complainant's contentions can be summarised as follows:

The Domain Names are identical or similar to names or marks in which the Complainant has Rights.

Founded in 1975, Microsoft is a worldwide leader in software, services and solutions that help people and businesses. It is the owner of the registered marks MICROSOFT and WINDOWS for these goods and services. It has extensive goodwill in these marks.

The MICROSOFT mark has been used by the Complainant since as early as 1975 and has been used continuously since in connection with software and related goods and services. Annual revenue in 2014 was approximately \$86, 833, 000,000. The Complainant owns several domain name registrations including microsoft.com and microsoft.co.uk.

The Complainant owns 14 trade mark registrations for MICROSOFT covering the UK, where the Respondent resides, all registered well before the registration of the Domain Names. It also owns at least 34 trade mark registrations covering the UK that include the name MICROSOFT. Users are accustomed to seeing the Complainant's MICROSOFT mark alone and alongside its various product names, for example MICROSOFT OFFICE. MICROSOFT is world famous.

microsoftedge.co.uk contains the Complainant's well known and distinctive MICROSOFT mark and the suffix 'edge' which is insufficient to avoid confusion from the Complainant's MICROSOFT mark. Further on 26 January 2015 numerous articles reported that the Complainant's new browser may be called 'Microsoft edge'. microsoftedge.co.uk was registered the same day by a third party. On 17 March 2015 further speculation about the browser name was posted on a popular UK web site identifying 'Microsoft Edge' as one of the potential names for the Complainant's new browser. On the same day as this article was published the Respondent acquired windowsedge.co.uk from a third party. On 29 April 2015 the Complainant confirmed that the new browser would be called 'Microsoft Edge'. The suffix 'edge' simply makes it clear that microsoftedge.co.uk refers to the Complainant's product.

The Complainant began using the WINDOWS trade mark at least as early as 1983, and has used the trade mark at least as early as then, predominantly for its computer operating system and associated goods and services. Over 1.5 billion people use Windows the Complainant's product every day. The Complainant owns several domain names comprised of its WINDOWS mark including windows.com and windows.co.uk which both direct to microsoft.com.

Microsoft owns 7 trade mark registrations covering the UK for the mark WINDOWS all of which predate the Respondent's acquisition of the Domain Names. The Complainant owns at least 34 trade mark registrations containing WINDOWS in the UK which is often used with sub brands and users are accustomed to seeing use of the Complainant's WINDOWS mark both alone and alongside its product names. WINDOWS is well known to the general public with brand recognition in the UK in the computing sector as high as 99 percent. Accordingly the Complainant has well known registered rights and substantial unregistered goodwill in its WINDOWS mark.

The Domain Names all consist of the Complainant's distinctive and well known WINDOWS or MICROSOFT marks as prefix coupled with suffixes that each directly refer to one of the Complainant's products in development. The nature of the suffixes serves to reinforce the similarity of the Domain Names to the Complainant's marks.

The domain name windowsten.co.uk refers to Windows 10, the Complainant's next computer operating system, although it is still in testing phase 1.7 million people have downloaded Windows Ten. The Complainant first announced this system on 30 September 2014, which was widely reported in the media. The Respondent registered windowsten.co.uk the same day.

The domains windowsmobile10.co.uk and windows10mobile.co.uk refer to the Complainant's forthcoming mobile operating system. The Complainant announced the concept, but not the name at the Windows press event in September 2014. Press sources reported from January 2015 that the mobile operating system would be called WINDOWS MOBILE 10. The Respondent registered windowsmobile10.co.uk on 19 March 2015. On 13 May 2015, Microsoft confirmed in a press release that its new mobile system would in fact be called WINDOWS 10 MOBILE. On the same day the Respondent registered windows10mobile.co.uk.

The domain windowsholographic.co.uk refers to brand new technology in development by the Complainant. It announced this during a promotional event on 21 January 2015 where it referred to 'Windows Holographic' on numerous occasions as a future focussed virtual reality platform. It was widely reported in the press the same day. The Respondent registered 'windowsholographic.co.uk' the same day.

The registration of the Domain Names is without the Complainant's authorisation and takes unfair advantage of the Complainant's Rights in the marks MICROSOFT and WINDOWS. The registration and use amounts to passing off.

There is no legitimate use that the Respondent could make with the Domain Names. The Respondent has also registered a number of domains similar to the names of banks and financial institutions. This suggests a fraudulent motive and a risk to the public.

Furthermore certain of the Domain Names windows10mobile.co.uk and windowsmobile10.co.uk already provide pay-per-click links to web sites offering goods and services in connection with or competition with the Complainant in a confusing manner. This represents a security risk to the user. Where no link exists this will cause damage to the Complainant as a company known for reliable technological solutions.

Given the nature and number of the Domain Names it is inconceivable that the Respondent was not aware of the Complainant when it registered the Domain Names. The fact that each of the Domain Names were registered after one of the Complainant's product names were announced are a clear indication they were registered to block the Complainant from reflecting its name in a corresponding domain name or for the purpose of selling the Domain Names to the Complainant or its competitors. It must have been clear to the Respondent that the registration of the Domain Names would unfairly disrupt the business of the Complainant and that the Domain Names would be visited by consumers in search of the Complainant not the Respondent. The Respondent is engaged in a pattern of registration of domain names that correspond to well-known trade marks in which the Respondent has no apparent rights and the Domain Names are part of that pattern.

The Respondent also owns multiple domain names containing signs identical or similar to well-known technology brands including Google, Amazon, eBay, Android, Facebook, LinkedIn, Twitter, Xbox Online and YouTube without apparent rights to do so.

The Respondent is also a serial typosquatter e.g. it has recently registered twitterco.uk to

catch users that omit the full stop looking for the genuine Twitter site.

The Respondent has made no legitimate, non-commercial or fair use of the Domain Names. Complainant has not given the Respondent consent. Respondent could not be legitimately connected to the Domain Names since they incorporate the Complainant's trade marks as their most distinctive element. The Domain Names are not generic or descriptive.

The registration of the Domain Names falls within a very specific pattern of the Respondent registering domains containing the Complainant's MICROSOFT and WINDOWS marks along with names of recently announced products of the Complainant and are abusive.

### **Respondent**

As indicated above no response has been filed in this case so there are no contentions made by the Respondent

## **6. Discussions and Findings**

### **General**

To succeed in this Complaint the Complainant has to prove to the Expert pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to each of the Domain Names and, secondly, that the Domain Names, in the hands of the Respondents, are an Abusive Registration (as defined in paragraph 1 of the Policy).

### **Complainant's Rights**

The Complainant is the proprietor of, inter alia, registered trade marks for MICROSOFT and WINDOWS for software and related goods and services. The Domain Names contain either the WINDOWS or MICROSOFT marks in their entirety. The addition of the terms 'edge', 'mobile10', '10mobile', 'holographic' or 'ten' do not serve to distinguish between the Domain Names and the Complainant's registered trade marks MICROSOFT or WINDOWS respectively, especially as they relate to names of the Complainant's products in development and so are likely to add to confusion. Accordingly the Expert finds that the Complainant has Rights in respect of marks, which are similar to the Domain Names.

### **Abusive Registration**

This leaves the second limb. Is the Domain Name, in the hands of the Respondent, an Abusive Registration? Paragraph 1 of the Policy defines "Abusive Registration" as:-  
"a Domain Name which either:

i. was registered or otherwise acquired in a manner, which at the time when the

registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; OR

ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 3a of the Policy. These include:

iii 'The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well-known names or trade marks in which the Respondent has no apparent rights, and the Domain Names are part of that pattern.

The Expert is of the opinion that the Respondent's conduct and use of the Domain Names is indicative of relevant abusive conduct. There is very strong evidence that the Respondent has targeted the Complainants, in particular in this case, given the timing of the registrations of the Domain Names, just after names of the Complainant's new products were announced, sometimes on the same day. The Respondent also owns a large number of domain name registrations containing the names of financial institutions and technology companies. The Respondent has not responded to refute the Complainant's allegations. Accordingly the Expert is of the view that the Respondent took unfair advantage of and caused detriment to the Complainant's rights as the evidence shows that on a balance of probabilities he registered the Domain Names as a pattern of registrations corresponding to well-known names or trade marks in which the Respondent has no apparent rights. In light of this finding there is no need to consider further the contentions that the Domain Names are also blocking registrations or the names were registered to sell to the Complainant or its competitors.

Accordingly, the Expert finds that the Domain Names are Abusive Registrations within the definition of that term in paragraph 1 of the Policy.

## **7. Decision**

In light of the foregoing findings, namely that the Complainant has Rights in respect of names which are similar to the Domain Names and that the Domain Names, in the hands of the Respondent, are Abusive Registrations, the Expert directs that the Domain Names microsoftedge.co.uk, windows10mobile.co.uk, windowsholographic.co.uk, windowmobile10.co.uk, and windowsten.co.uk be transferred to the Complainant.

**Signed: Dawn Osborne**

**Dated: August 12, 2015**