



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

## ADMINISTRATIVE PANEL DECISION

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**Case No.** KR-2300241

**Complainant:** Samsung Electronics Co., Ltd

(Authorized Representative: Sangjin Park, Patent Attorney, Bae,  
Kim & Lee IP)

**Respondent:** ТОВ "ТРЕЙДІНГ МВК" / Костянтин Сичевський

**Disputed Domain Name(s):** <samsung-ukraine.com>

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### 1. The Parties and Contested Domain Name

The Complainant is Samsung Electronics Co., Ltd, 129, Samsung-ro, Yeongtong-gu, Suwonsi, Gyeonggi-do, Republic of Korea.

The Respondent is ТОВ "ТРЕЙДІНГ МВК" / Костянтин Сичевський, вул. Миколи Соловцова, буд. 5, м. Київ 01014, Ukraine.

The domain name at issue is <samsung-ukraine.com>, registered by INTERNET INVEST, LTD. dba IMENA.UA, Ukraine.

### 2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on March 9, 2023, seeking for a transfer of the domain name in dispute.

On March 15, 2023, the Center sent an email to the IMENA.UA asking for the detailed data of the registrant. On March 16, 2023, the Registrar verified that ТОВ "ТРЕЙДІНГ МВК" / Костянтин Сичевський is the current registrant of the name and that the Respondent is bound by the IMENA.UA registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules for the Policy (the "Rules"), and the Center's Supplemental Rules for the Policy.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on March 20, 2023 and the due date for the Response was April 9, 2023. No Response was filed by the due date. Having received no response from the Respondent, the Center transmitted to the parties a Notification of the Respondent Default on April 20, 2023.

On April 20, 2023, the Center appointed Mr. Ho-Hyun Nahm as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On May 3, 2023, the Administrative Panel (the "Panel") issued a Procedural Order in Ukrainian and English for the Complainant to rectify the deficiencies of the complaint in terms of the indication of the Respondent, the language of proceedings, and the proof of the Complainant's trademark rights by setting a deadline of May 8, 2023 for the Complainant and a deadline of May 13, 2023 for the Respondent to submit a submission, if any, in response to the Complainant's scheduled additional submission.

On May 8, 2023, the Complainant submitted the amended Complaint along with additional exhibits per the Panel's Procedural Order. No submission in response to the Complainant's amended Complaint from the Respondent was filed by the due date of May 13, 2023.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Center has discharged its responsibility under Paragraph 2(a) of the Rules "to employ

reasonably available means calculated to achieve actual notice to Respondent” through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the Rules, the Center's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

### **3. Factual background**

The Samsung Group to which the Complainant belongs was established as Samsung Sanghoe in Daegu in 1938. Since then, it has grown into a global group company, which comprises numerous affiliated businesses. These affiliates have stood out as one of the best in the relevant industry and are recognized as the industry leaders. ‘SAMSUNG,’ which is the company name/trademark of the Complainant’s group company, has been widely used all over the world for a long period of time, and thus it is a globally well-known mark as the source indicator of the Complainant’s group company.

The disputed domain name was registered on September 5, 2022. The disputed domain name resolves to a website, which displays the Complainant’s mark “SAMSUNG” logo and offers competing goods with the Complainant’s.

### **4. Preliminary Issue: Language of the Proceedings**

The Panel notes that the Registrar has verified to the Center that the Registration Agreement for the disputed domain name is in Ukrainian, thereby making the language of the proceedings in Ukrainian. The Complainant has requested that the proceeding should be in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking into consideration the particular circumstances of the administrative proceeding. *See* Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. *See* also *FilmNet Inc. v Onetz*, FA 96196 (Forum Feb. 12, 2001) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Korean being designated as the required language in the registration agreement because the respondent submitted a response in English after receiving the complaint in Korean and English). The Complainant contends that i) when the authorized representative of the Complainant inquired about the language to the Registrar, the response was in ‘Ukrainian and English’; and ii) the disputed domain name’s resolving website is provided in

English, and thus the Respondent should have no difficulty in communicating in English.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by the Complainant to suggest the likely possibility that the Respondent is conversant and proficient in the English language. After considering the circumstance of the present case, in the absence of a response and no objection to the Complainant's request for the language of proceeding, the Panel determines that the proceeding should be in English.

## **5. Parties' Contentions**

### **A. Complainant**

i) The Complainant has rights in "SAMSUNG" logo mark and in the "SAMSUNG" word mark based on registrations of the marks around the world, *inter alia*, with the State Intellectual Property Service of Ukraine (Reg. No. No. 7843, registered on February 28, 1997) and with the Korean Intellectual Property Office (Reg. No. 0019477, registered on June 1, 1970). The disputed domain name is confusingly similar to Complainant's mark as it merely adds the generic term "ukraine" and the ".com" gTLD to the Complainant's mark.

ii) The Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor has the Respondent been authorized by the Complainant to use the Complainant's mark.

iii) The Respondent registered and uses the disputed domain name in bad faith. The Respondent had knowledge of the Complainant's rights in the Complainant's mark prior to registering the disputed domain name. The Respondent uses the disputed domain name to pass itself off as the Complainant. The disputed domain name's resolving website displays a misleading message to cause confusion as to the relationship between the Respondent and the Complainant. The disputed domain name's resolving website offers competing goods for sale by displaying the Complainant's marks. The Respondent did not respond to the Complainant's cease and desist letter.

### **B. Respondent**

The Respondent did not submit a response in this proceeding.

## **6. Findings**

(i) The Complainant has established rights in “SAMSUNG” logo mark and in the “SAMSUNG” word mark based on registrations of the marks around the world, *inter alia*, with the State Intellectual Property Service of Ukraine (Reg. No. No. 7843, registered on February 28, 1997) and with the Korean Intellectual Property Office (Reg. No. 0019477, registered on June 1, 1970). The disputed domain name is confusingly similar to the Complainant’s mark.

(ii) The Respondent is not commonly known by the disputed domain name. The Complainant has not authorized the Respondent to use the Complainant’s mark. The Respondent lacks rights or legitimate interests in the disputed domain name.

(iii) The Respondent passes itself off as the Complainant by displaying the Complainant’s mark and a misleading message on the disputed domain name’s resolving website. The Respondent registered and uses the disputed domain name in bad faith.

## **7. Discussion**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- (i) the domain name registered by a Respondent is identical or confusingly similar to a trademark or service mark in which a Complainant has rights; and
- (ii) a Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Forum July 31, 2000) (holding that the respondent’s failure to respond allows all

reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

### **A) Identical / Confusingly Similar**

The Complainant contends that it has rights in “SAMSUNG” logo mark  and in the “SAMSUNG” word mark based on registrations of the marks around the world, *inter alia*, with the State Intellectual Property Service of Ukraine (Reg. No. No. 7843, registered on February 28, 1997) and with the Korean Intellectual Property Office (Reg. No. 0019477, registered on June 1, 1970). A national trademark registration is sufficient in conferring rights in a mark under paragraph 4(a)(i) of the Policy. Therefore, the Panel finds the Complainant has established rights in the marks “SAMSUNG” logo and “SAMSUNG.”

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s mark because it incorporates the Complainant’s mark and merely adds ‘Ukraine’ and the “.com” gTLD. The Panel notes that that merely adding a generic term to a complainant’s mark can still make the domain name confusingly similar. *See Microsoft Corporation v. Thong Tran Thanh, FA 1653187* (FORUM Jan. 21, 2016) (determining that confusing similarity exists where a disputed domain name contains a complainant’s entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from the other for the purposes of the Policy). Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s SAMSUNG mark pursuant to Policy paragraph 4(a)(i).

### **B) Rights and Legitimate Interests**

A complainant must first make a prima facie case that a respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), and then the burden shifts to the respondent to show it does have rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm’t Commentaries, FA 741828* (Forum Aug. 18, 2006) (holding that the complainant must first make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in

a domain name); *see also AOL LLC v. Gerberg, FA 780200* (Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

The Complainant contends that the Respondent is an entity completely unrelated to the Complainant, and has registered and retained the disputed domain name incorporating the Complainant’s mark even though it has not been granted any authorization by the Complainant. When a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii). *See Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, FA 1741129* (Forum Aug. 16, 2017) (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent’s use of the same). In addition, lack of authorization to use a complainant’s mark may indicate that the respondent is not commonly known by the disputed domain name. *See SPTC, Inc. and Sotheby’s v. Tony Yeh shiun, FA 1810835* (Forum Nov. 13, 2018) (finding no rights or legitimate interests in the <sothebys.email> domain name where the WHOIS identified Respondent as “Tony Yeh shiun,” Complainant never authorized or permitted Respondent to use the SOTHEBY’S mark, and Respondent failed to submit a response.). The WHOIS information for the disputed domain name lists the registrant as “ТОВ "ТРЕЙДИНГ МБК" and the Complainant asserts there is no other evidence to suggest that Respondent was authorized to use Complainant’s mark. Therefore, the Panel finds Respondent is not commonly known by the disputed domain name per Policy paragraph 4(c)(ii).

The Panel further notes that the Respondent pretends that it is related to Samsung Group and introduces Samsung Group in the disputed domain name’s resolving website. The Respondent passes itself off as the Complainant by advertising the Complainant’s products for sale on an unauthorized basis. Using a disputed domain name to pass off as a complainant for the purpose of the unauthorized sale of a complainant’s products may not be a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraphs 4(c)(i) or (iii). *See Dell Inc. v. Devesh Tyagi, FA 1785301* (Forum June 2, 2018) (“Respondent replicates Complainant’s website and

displays Complainant's products. The Panel finds that this use is not a bona fide offering of goods or services under Policy paragraphs 4(c)(i) & (iii).") The Complainant provides a screenshot of the disputed domain name's resolving website highlighting the use of the Complainant's marks and a text message pretending it is related to the Complainant. The Panel therefore finds Respondent fails to make a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraphs 4(c)(i) or (iii).

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

### **C) Bad Faith**

The Complainant contends that the Complainant's mark was globally well-known as a company name and a trademark of the Complainant's group company long before the Respondent registered the disputed domain name. The Complainant registered its mark for the first time in Korea on May 12, 1970 and since then, it has registered in major countries all over the world including the Ukraine. The disputed domain name was not only registered on September 5, 2022, which is very recent compared to the Complainant's first Ukrainian trademark registration of March 29, 1993, but also identical to the Complainant's company name, which is widely known in all over the world. Under the circumstances, it cannot be seen that the Respondent did not know and accidentally registered the disputed domain name. Thus, it is obvious that the Respondent has registered and retained the disputed domain name for commercial gain by capitalizing on the reputation of the Complainant's marks. The Panel infers, due to the notoriety of the Complainant's mark and the manner of use of the disputed domain name that the Respondent had knowledge of the Complainant's rights in the Complainant's marks at the time of registering the disputed domain name, and finds that the Respondent registered the disputed domain in bad faith under Policy paragraph 4(a)(iii).

The Complainant further contends that the Respondent pretends that it is related to the Samsung Group and introduces the Samsung Group in the disputed domain name's resolving website. The Respondent is causing confusion to consumers by implying that the Respondent is related to Samsung Group and/or the Complainant. This supports that the Respondent is



attempting to attract Internet users to its website unfairly. The Complainant has provided screenshots of the disputed domain name's resolving website, which displays a message misleading Internet user into believing that the Respondent is a related company to the Complainant.

The Panel finds that registration of a confusingly similar domain name with the intent to disrupt business by passing off as a complainant can evince bad faith registration and use per Policy ¶ 4(b)(iv). See *Bittrex, Inc. v. Wuxi Yilian LLC*, FA 1760517 (Forum December 27, 2017) (finding bad faith per Policy ¶ 4(b)(iv) where "Respondent registered and uses the <lbitrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website in order to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant."). The Complainant provides a screenshot of the resolving webpage of the disputed domain name, which shows the prominent use of the Complainant's logo mark throughout the website, and the reproduction of the photographs of the Complainant's products. The Panel thus finds that the Respondent registered and uses the disputed domain name in bad faith per Policy paragraph 4(b)(iv).

## 8. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**. Accordingly, it is Ordered that the <samsung-ukraine.com> domain name be **TRANSFERRED** from Respondent to Complainant.



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Ho-Hyun Nahm  
Sole Panelist

Dated: May 16, 2023