

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation (IBM) v. Host Master, Transure Enterprise Ltd  
Case No. D2023-3282

### **1. The Parties**

The Complainant is International Business Machines Corporation (IBM), United States of America, internally represented.

The Respondent is Host Master, Transure Enterprise Ltd, United States of America.

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

The disputed domain name <myibmchq.net> is registered with Above.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 10, 2023, 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 amendment to the Complaint on August 11, 2023.

The Center verified that the Complaint together with the amendment to 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 formally notified the Respondent of the Complaint, and the proceedings commenced on August 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on October 5, 2023. 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, International Business Machines Corporation, is a leading company in the design and manufacture of a wide array of products that record, process, communicate, store and retrieve information, including computers and computer hardware, software, and accessories.

The Complainant has an extensive global portfolio of trade marks including the term IBM, including the following:

- United States of America Trade Mark Registration for IBM No. 1,205,090 in Classes 1, 2, 7, 9, 10, 16, 37, 41 and 42, registered on August 17, 1982;
- United States of America Trade Mark Registration for IBM No. 1,243,930 in Class 42, registered on June 28, 1983; and
- United States of America Trade Mark Registration for IBM No. 4,181,289 in Classes 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35 and 41, registered on July 31, 2012.

The disputed domain name was registered on March 3, 2023.

According to screenshots provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to a website that displays a “Trojan spyware alert”. At the time of issuance of this decision, the disputed domain name resolved to either a pay-per-click website or a website displaying a “Malicious Site Blocked” message, depending on the browser used.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant asserts that it has prior rights in the IBM trade mark and that it is a leading player in its field of business.

The Complainant also asserts that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant’s IBM trade marks, and that the addition of the Top-Level Domain (“TLD”) “.net” does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant’s trade marks.

Furthermore, the Complainant argues that the addition of “my” and “chq” – the latter is commonly known as the acronym for “Corporate Headquarters” in the context of the corporate business world – does not obviate the confusing similarity between the disputed domain name and the Complainant’s IBM trade marks.

The Complainant asserts that it has not authorized the Respondent to use the IBM mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant also asserts that there is no evidence suggesting that the Respondent has any connection to the IBM mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

## B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the IBM trade mark in many jurisdictions around the world.

Disregarding the TLD “.net”, the disputed domain name incorporates the Complainant's trade mark IBM in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant's IBM trade mark. The inclusion of the additional terms “my” and “chq”, which can mean “Corporate Headquarters”, does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the IBM trade mark and in showing that the disputed domain name is confusingly similar to its mark.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that he enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated its preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In light of the evidence submitted by the Complainant, the Panel finds that the Complainant has demonstrated that the disputed domain name resolves to a website that displays a “Apple – Security Warning” and finds that such use of the disputed domain name does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular, but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the IBM trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term "ibm" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in IBM for its products and services predate the registration date of the disputed domain name. A simple online search (e.g., via Google or Baidu) for the term "ibm" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

The disputed domain name points users to a webpage with a Trojan spyware alert. In this sense, previous UDRP panels have held that use of a domain to warn about Trojan spyware is evidence of bad faith. Finally, dynamic redirection to a third-party website associated with malware is evidence of bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

## **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 <myibmchq.net> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: October 23, 2013