

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation (IBM) v. mehmet sahin  
Case No. D2023-2238

### **1. The Parties**

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

The Respondent is mehmet sahin, Türkiye.

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

The disputed domain name <ibmcs.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 email communications to the Complainant on May 26, June 5, 13, and 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Respondent sent email communications on May 26, June 5, 13, and 20, 2023. The Complainant filed an amendment to the Complaint on June 20, 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 June 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2023. The Response was filed with the Center on June 22, 2023, and the Respondent sent a further email communication on June 23, 2023. The Center notified the Commencement of Panel Appointment Process on July 18, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on July 24, 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.

The Respondent sent further communications on July 24, 28, 30, and 31, 2023.

On August 3, 2023, the Panel issued Procedural Order No.1 (“PO1”) inviting the Respondent to supply certain information, details of which are set out in section 6 below. The Respondent did not respond by the deadline of August 9, 2023, specified in PO1. The Complainant sent a communication to the Center on August 14, 2023, and the Respondent sent two further communications on the same day.

#### **4. Factual Background**

The Complainant is the well-known technology company that has traded under the mark IBM for a century or so.

The Complainant owns many trade marks for IBM including United States trade mark No. 640,606, registered on January 29, 1957, in class 21.

The Complainant spends over USD 1 billion annually marketing its goods and services worldwide.

The disputed domain name was registered on October 12, 2022.

According to screenshots taken October 14, 2022, and January 10, 2023, the disputed domain name resolved to a Registrar parking page with pay-per-click (“PPC”) links to “Cloud Technology”, “Vendors” and “Security Virus Protection”.

The Complainant says the Respondent did not reply to the Complainant’s cease and desist letters sent on October 14 and 18, 2022; the Respondent seems to question this.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends that: the disputed domain name is identical to the Complainant’s trade mark except for the addition of “cs” which could reasonably be understood as an abbreviation of “computer science”; the Respondent has used the disputed domain name illegitimately for PPC links referring to products and services offered by the Complainant; and the IP address associated with the disputed domain name is linked to the distribution of “botnets”, which are used to attack websites, potentially including the sending of unsolicited emails and gathering of sensitive financial data.

##### **B. Respondent**

The following is a summary of the Respondent’s contentions.<sup>1</sup>

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<sup>1</sup> The Panel has treated the Respondent’s email of June 22, 2023, described as the “defense”, as the Response by the Respondent. The Respondent has sent many other emails to the Center repeating and expanding its arguments, some after the Response due date. The Rules do not permit multiple versions of a Response (except insofar as they qualify as admissible supplemental filings – WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 4.6). In any case, the Panel has read all of the Respondent’s emails and can confirm that none of them would have changed the outcome of this case had they been treated as part of the Response. Furthermore, the Panel has borne the contents of those emails in mind to assist the Panel’s understanding of the Respondent’s contentions in the Response.

IBM, although famous, is just a three-letter acronym that can be used by others in a non-conflicting way. The acronym "IBMCS" contains many other brands such as BMC, MCS, IB, BM, MC, CS and IBMC, some of which are famous and/or trademarked.

There is no sufficient similarity between the trade mark and the disputed domain name. IBMCS is much closer to the IBMC trade mark, which is unrelated to IBM and has a better claim to the disputed domain name than the Complainant. Merely filing a complaint shouldn't give the Complainant more rights than other trade mark owners.

The Respondent has never offered or listed the disputed domain name for sale.

The Respondent has never used the disputed domain name other than to try and create a basic site and email, which failed, possibly because the Registrar blocked such changes due to this proceeding.

The Registrar, not the Respondent, creates, controls and profits from the PPC advertisements. The Respondent "hates" such advertisements but the Registrar ignored the Respondent's repeated requests to remove them. The Respondent cannot prevent the Registrar's publication of the advertisements other than to create an alternative "clean" landing page, but this process can take hours and will not achieve anything other than removal of the advertisements.

It is illogical for the Complainant to imply that "cs" in the domain name means "customer service" because, not only could "cs" mean anything, but the acronym "IBMCS" might for example refer to "International BMC Services" or "IBMC services" (unrelated to the IBMC trade mark) or to many potential kinds of use not linked to a trade mark, for example the common phrase: "Integrated Business Management and Control System".

This is a case of reverse domain name hijacking as the Complainant has failed to establish even one of the three elements under the Policy.

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "cs") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Respondent misunderstands how the first element works. For these purposes, it does not matter if the disputed domain name could be considered as “more similar” to another trade mark, such as IBMC. While this issue could theoretically be relevant under the second or third elements, the first element, which is in the nature of a preliminary test to establish whether the Complainant has the right to present its case, involves only a relatively straightforward side-by-side comparison between the trade mark and the disputed domain name. Here, the Complainant’s IBM mark is readily recognisable as the first three letters of the acronym “IBMCS” and that is sufficient. Such a finding does not give the Complainant any “more rights” than the proprietor of any other mark to which the acronym may be similar, because the complainant, like any other proprietor, still has to establish the other two elements of the Policy.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy (*bona fide* offering of goods or services), the disputed domain name has been used for a Registrar parking page with PPC links to goods and services relating to those supplied by the Complainant. Use of a domain name to host PPC links that compete with or capitalise on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users does not represent a *bona fide* offering. [WIPO Overview 3.0](#), section 2.9.

Panels have additionally noted that respondent efforts to suppress PPC advertising related to the complainant’s trade mark can mitigate against an inference of targeting the complainant. [WIPO Overview 3.0](#), section 2.9. The Respondent claims that the Registrar ignored the Respondent’s alleged multiple requests to remove such advertising, but the Respondent has failed to provide proof of having made such requests, despite having been specifically invited to produce this. See further under section 6C below.

While the Respondent generally objects to being held responsible for the PPC links on the Registrar parking page – the Panel discusses this issue in section 6C – it is in any case clear that this page does not constitute a *bona fide* offering of goods or services for the purpose of the second element.

The Respondent also refers to an alleged attempt to use the disputed domain name to create a basic site and email which failed. According to the Respondent, such failure may have occurred because the Registrar blocked such changes in connection with this proceeding.

Where a respondent relies on future plans to use a domain name, clear contemporaneous evidence of *bona fide* pre-complaint preparations predating the Respondent's notice of the dispute is required. While, depending on the circumstances, such evidence may not need to be particularly extensive, it must go beyond a mere statement of a claimed intention. [WIPO Overview 3.0](#), section 2.2. Whereas, here, not only does it appear that the alleged attempted use of the disputed domain name occurred after the Complaint was filed, but the Respondent has provided no explanation or evidence demonstrating how the Respondent allegedly intended to use the disputed domain name – see further under section 6C below.

Nor is there any evidence that paragraphs 4(c)(ii) (being commonly known by the disputed domain name) or 4(c)(iii) (legitimate noncommercial or fair use) of the Policy are relevant in the circumstances of this case.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel will first consider the likelihood, or otherwise, that the Respondent registered the disputed domain name in order to illicitly target the Complainant's mark.

In the Panel's view, the most obvious meaning of the disputed domain name is that it denotes the Complainant's distinctive and well-known trade mark, which is the first and dominant part of the disputed domain name, plus the term "cs", most likely an acronym reflecting a phrase such as "customer service" or "computer science".

The Panel notes that the Respondent does not deny awareness of the Complainant's mark at the time of registration of the disputed domain name, and indeed the Respondent acknowledges that the mark is famous.

It is true that, as the Respondent contends, the disputed domain name can also be read in other ways. The Respondent gives examples of acronyms or part-acronyms such as "International BMC Services", "IBMC Services" and "Integrated Business Management and Control System". The Respondent also asserts that the disputed domain name can be seen as denoting third party trade marks such as BMC, MCS, IB, BM, MC, CS and IBMC, albeit that the Respondent does not provide evidence of such marks except for IBMC.

However, despite its multiple submissions, the Respondent has not seen fit at any point to explain precisely why it chose to register the disputed domain name, whether in connection with any of the Respondent's above suggested meanings – although if those intended meanings were tied to another brand (e.g., IBMC), this would not necessarily assist the Respondent - or otherwise, let alone to supply any supporting evidence.

Partly to ensure that such omission was not the result of a misunderstanding of the Policy, the Panel issued PO1 on August 3, 2023, inviting the Respondent:

- to disclose the reason why the Respondent selected and registered the disputed domain name and to provide dated evidence supporting such explanation;
- if the Respondent maintained that the disputed domain name was part of a pattern of similar legitimate domain names owned by the Respondent, to provide a list of such domain names including the dates when acquired by the Respondent;
- to supply complete and dated copies of his alleged communications with the Registrar requesting removal of PPC advertisements; and
- to respond to the Complainant's assertion that the Respondent misused the disputed domain name by pointing to visitors to a website that created a cybersecurity threat by distribution of "botnets".

The Respondent could have taken advantage of PO1 to explain and justify the selection of the disputed domain name, for example, by producing a list of legitimate acronym-type domain names owned by the Respondent.

However, the Respondent did not respond to PO1. Instead, after the due date for the Respondent's reply to PO1, the Respondent sent two emails that largely reiterated the Respondent's previous submissions.

Furthermore, the Panel notes that the Respondent was found to have registered and used two other domain names in bad faith in a previous case under the Policy. See *Travellers Exchange Corporation Limited v. mehmet sahin, and Ali Sahin*, WIPO Case No. [D2023-0947](#) ("the Previous Case").

In the above circumstances, it is difficult to avoid the conclusion that the Respondent registered the disputed domain name in bad faith, with the Complainant's mark primarily in mind.

As regards use of the disputed domain name in bad faith, the Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the Panel's view, by using the disputed domain name, including the Complainant's famous and distinctive trade mark, in connection with a parking page with PPC links relating to the Complainant's industry, the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

The Respondent strongly denies that it should be held responsible for the PPC links on the basis that the Registrar, not the Respondent, created, controlled and profited from the PPC advertisements.

However, respondents cannot disclaim responsibility for "automatically" generated pay-per-click links on their websites and neither the fact that such links are generated by a third party such as a nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

While panels have found that positive efforts by a respondent to avoid links which target the complainant's mark to be a mitigating factor in assessing bad faith ([WIPO Overview 3.0](#), section 3.5), the Respondent has failed to respond to the Panel's invitation to provide evidence in support of its assertion that it repeatedly asked the Registrar to remove them. The Panel is not convinced by the Respondent's claim that replacement of the Registrar parking page with the Respondent's own "clean" landing page would have been too time consuming. Furthermore, the Response presupposes that the Respondent was aware of the existence, and problematic nature, of the PPC links, and indeed the Panel notes that a PPC page with competitor links formed part of the bad faith finding in the Previous Case.

The likelihood of confusion is not diminished by the probability that users arriving at the Respondent's site will realise that the site is not connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users, and the disputed domain name creates an implied risk of affiliation with the Complainant.

Furthermore, while paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, 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 would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Accordingly, even if the disputed domain name had not been used for a Registrar parking page, the Panel would nonetheless have made a bad faith finding in this case on the basis of the following factors: (i) the degree of distinctiveness and reputation of

the Complainant's mark, (ii) the composition of the disputed domain name, (iii) the failure of the Respondent to explain the Respondent's purpose in registering the disputed domain name or to provide any evidence of actual or contemplated good-faith use, and (iii) the bad faith finding against the Respondent in the previous case.

Based on the available record, the Panel finds the third element of the Policy has been established.

The Panel would add that it has made no finding that the Respondent used the disputed domain name in connection with illicit "botnets". The Complainant's supporting evidence does not appear to indicate that such illegitimate usage actually occurred, simply that there was a risk thereof. The Panel is not clear how this risk factor was assessed, nor what it means. Nor has the Complainant reconciled these alleged illicit activities with the use of the disputed domain name for a Registrar parking page.

The Respondent has alleged that these proceedings are biased against it, apparently based on routine procedural steps, such as disclosure by the Registrar to the Center of the contact details of the registrant of the disputed domain name and the provision of such information to the Complainant in order to enable it to amend its Complaint accordingly if it wished. These are entirely standard processes in accordance with paragraph 4 of the Rules, and they also occurred in the Previous Case. The reason why the Respondent has lost this case is that it has failed to provide a plausible legitimate reason for registering the disputed domain name, let alone supporting evidence, despite being specifically invited to do so.

Finally, the Respondent appears to assert that the Respondent's name should not be published with this decision. However, paragraph 4(j) of the Policy states that UDRP decisions must be published in full over the Internet (as occurred in the Previous Case) unless a panel determines in an exceptional case to redact portions of its decision, and no such circumstance, let alone an exceptional one – has been put forward in this case.

## **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, <ibmcs.com>, be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: August 21, 2023