

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. tian yang
Case No. D2022-4200

1. The Parties

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

The Respondent is tian yang, China.

2. The Domain Names and Registrar

The disputed domain names <ibm-ltd.com>, <ibm-ss.com>, <ibmsss.com>, <new-ibm.com>, and <vip-ibm.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 8, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 2022 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 November 10, 2022.

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 November 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 14, 2022.

The Center appointed Andrea Mondini as the sole panelist in this matter on January 6, 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 is a leading worldwide provider of computer hardware, software and IT services which has been trading under the IBM mark for almost 100 years.

The Complainant owns numerous trademark registrations for its IBM mark in more than 130 countries worldwide, *inter alia*, the United States trademark registration for the mark IBM (logo) No. 4,181,289 in International Classes 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35 and 41 registered on July 31, 2012 and the United States trademark registration for the mark IBM (word mark) No. 1,694,814 in International Class 36 registered on June 16, 1992.

The Complainant also holds several domain names incorporating its IBM mark, including the domain name <ibm.com>.

Two of the disputed domain names, namely <ibm-ss.com>, and <ibmsss.com>, were registered on March 9, 2022. The other three disputed domain names, namely <ibm-ltd.com>, <new-ibm.com>, and <vip-ibm.com> were registered on August 31, 2022.

As of September 10, 2022, the disputed domain name <ibmsss.com> resolved to a website hosting an e-commerce platform, and the disputed domain names <ibm-ss.com>, <ibm-ltd.com>, <new-ibm.com>, and <vipibm.com> directed to websites hosting a log-in page for Internet users of such e-commerce platform hosted on the disputed domain name <ibmsss.com>. The websites linked to the disputed domain names <ibmsss.com>, <ibm-ss.com>, <new-ibm.com>, and <vip-ibm.com> displayed the letters “ibm”.

As of October 8, 2022, following the Complainant’s correspondence to the Respondent, the content hosted on all the disputed domain names changed to inactive websites.

5. Parties’ Contentions

A. Complainant

The Complainant contends as follows:

The IBM trademark is a famous mark and is one of the most valuable trademarks worldwide.

All disputed domain names are confusingly similar to the IBM trademark in which the Complainant has rights, because they incorporate this trademark in its entirety. The addition in the respective disputed domain names of “ltd”, “ss”, “sss”, “new” and “vip”, and of a hyphen, are not sufficient to avoid confusing similarity between the disputed domain names and the Complainant’s trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant’s mark IBM is famous and is associated with the Complainant, since the trademark IBM has been extensively used worldwide for approximately 100 years to identify the Complainant and its products and services. The Respondent has not been authorized by the Complainant to use this trademark nor to register the disputed domain names and there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain names in connection with a *bona fide* offering of goods and services.

The disputed domain names were registered and being used in bad faith because it is evident that the Respondent had knowledge of both the Complainant and its famous trademark IBM at the time it registered the disputed domain names, and because the Respondent has been using the IBM trademark in the disputed domain names to derive illegitimate commercial gains. In particular, the Respondent has been intentionally attempting to create a likelihood of confusion by using the disputed domain names to generate revenue through promoting a cryptocurrency cloud mining pyramid scheme and to lure unsuspecting Internet users and directed them to an e-commerce platform which displayed the letters “ibm” on its webpage.

The Complainant sent several cease and desist letters to the Respondent on March 15, 2022, March 29, 2022, April 20, 2022, September 2, 2022, September 12, 2022 and September 23, 2022, but the Respondent did not respond to such letters.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain names are identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trademark registrations for its IBM trademark.

The Panel notes that the disputed domain names incorporate the IBM trademark in its entirety. The addition of “Ltd”, “ss”, “sss”, “new”, “vip”, and of a hyphen, to the respective disputed domain names does not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8.

For these reasons, the Panel concludes that all disputed domain names are confusingly similar to the Complainant’s mark IBM.

The first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondent to use the trademark IBM and that before notice of the dispute, there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain names in good faith. The Panel does not see any contrary evidence from the present record.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names.

Furthermore, the nature of the disputed domain names, comprising the Complainant’s famous trademark IBM carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The second element of paragraph 4(a) of the Policy has been met.

C. Registered and Used in Bad Faith

The Complainant has shown to the satisfaction of the Panel that its IBM trademark is famous.

In the view of the Panel, it is inconceivable that the Respondent could have registered the disputed domain names without knowledge of the Complainant's well-known trademark IBM. In the circumstances of this case, this is evidence of registration in bad faith.

The Claimant submitted an investigation report identifying the disputed domain name <ibm-ss.com> as a domain name involved in a cryptocurrency cloud mining pyramid scheme and showing that users from several social media platforms were also found to be promoting the dispute domain name <ibm-ss.com> in relation to the pyramid scheme on social media platforms such as YouTube and Twitter.

Further, when the disputed domain name <ibmsss.com> was active, it lured unsuspecting Internet users and directed them to an e-commerce platform which displayed the letters "ibm" on its webpage, further contributing to the confusion that the Complainant would be somehow affiliated with the Respondent or endorsing its commercial activities, while in actuality it is not.

Additionally, when the disputed domain names <ibm-ss.com>, <ibm-ltd.com>, <new-ibm.com>, and <vip-ibm.com> were active, they served as a log-in page for Internet users of the e-commerce platform hosted on the disputed domain name <ibmsss.com> website.

The Panel thus finds that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion as to the source, sponsorship or affiliation of its website in the sense of paragraph 4(b) (iv) of the Policy.

As of October 8, 2022, the disputed domain names resolve to an inactive site. However, the Respondent's passive holding of the disputed domain names nevertheless qualifies as use in bad faith in this case (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In this regard, the Panel notes the reputation of the Complainant's IBM trademark, the Respondent's failure to submit a response, and the Respondent's previous bad faith use.

The Panel thus concludes that the disputed domain names were registered and used in bad faith.

The third element of has been met.

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 names <ibm-ltd.com>, <ibm-ss.com>, <ibmsss.com>, <new-ibm.com>, and <vip-ibm.com>, be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: January 13, 2023