

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Siva Sankar
Case No. D2024-2909

1. The Parties

The Complainant is International Business Machines Corporation, United States of America ("United States"), represented by Cameron Meindl, United States.

The Respondent is Siva Sankar, India.

2. The Domain Name and Registrar

The disputed domain name <ibmeschoolhiring.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 16, 2024. On July 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 17, 2024, 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 July 18, 2024, 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 July 18, 2024.

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 July 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on August 30, 2024. 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 multinational company specialized in the design and manufacture of a wide variety of products that process, communicate, store, and retrieve information, including computers and computer hardware, software, and accessories. Since 1924, the Complainant has offered products under the trademark “IBM”. The Complainant is regularly featured in rankings of the most valuable global brands.

The Complainant proposes an apprenticeship program that offers a learning experience in conjunction with a career at IBM. The Complainant also operates a program named IBM University Talent Acquisition, which provides a comprehensive range of recruitment and skills solutions, including global recruitment consulting services.

Among other registrations, the Complainant is the owner of:

- United States trademark registration No. 1243930 for “IBM”, registered on June 28, 1983, in class 42;
- United States trademark registration No. 4181289 for “IBM & design”, registered on July 31, 2012, in classes 6, 8, 9, 11, 4, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35, and 41.

The disputed domain name was registered on February 29, 2024.

At the time of filing of the Complaint, the disputed domain name resolved to a parking page with sponsored links. On one occasion at least, the Respondent sent an email from an address corresponding to the disputed domain name, namely [...]@ibmeschoolhiring.com, impersonating a division of the Complainant in India.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to its well-known trademark IBM, despite its combination with the letter “e” (commonly used to indicate the use of electronic means) and the common terms “school” and “hiring”. Furthermore, the Complainant asserts that the Respondent has used the disputed domain name to send emails that imitate the official IBM University Talent Acquisition email in India. Indeed, according to the Complainant, the Respondent created and sent at least one fraudulent email from the address [...]@ibmeschoolhiring.com, impersonating the Human Resources Site Lead of IBM in India and welcoming the recipient to the IBM Team. According to the Complainant, this provides additional evidence that the disputed domain name is identical or confusingly similar to its trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent has not been authorized by the Complainant to use the disputed domain name and is not commonly known by the disputed domain name. Furthermore, the Respondent has been actively misusing the IBM trademark in the disputed domain name to derive illegitimate commercial gains. Specifically, the Respondent has intentionally attempted to create a likelihood of confusion by pointing the disputed domain name to a website containing pay-per-click (“PPC”) links to third-party websites.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. It considers that the Respondent's use of IBM was aimed at taking advantage of the Complainant's trademarks' notoriety and reputation. In particular, the Complainant contends that the Respondent registered and used the disputed domain name to attract for commercial gain Internet users by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name registered by the respondent 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable 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.

Although the addition of other terms here, "e", "school" and "hiring", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Indeed, the mark IBM, which has no perceivable meaning and appears at the beginning of the disputed domain name, stands out clearly in comparison to the other generic terms within the disputed domain name.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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.

No evidence on the record suggests that the Respondent used or made demonstrable preparations to use the disputed domain name in connection with any type of bona fide offering of goods or services. Instead, based on the evidence provided by the Complainant, it appears that the Respondent used the disputed domain name in connection with a website containing PPC links to third-party websites. Applying paragraph 4(c) of the Policy, UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark, or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Accordingly, the Respondent's use of the disputed domain name does not constitute bona fide offering of goods and services.

Finally, the Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b).

Having reviewed the available 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 such as those enumerated in the Policy or otherwise.

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 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 present case, the Complainant's mark IBM has no perceivable meaning and is distinctive. The disputed domain name was registered many years after the Complainant first registered and used its IBM trademark. Given the distinctiveness and the notoriety of the Complainant's trademark, the Panel finds it unlikely that the disputed domain name was chosen independently without reference to the Complainant's trademark. Consequently, the Panel considers that the Respondent could not ignore the existence of the Complainant and of its trademark at the time of the registration of the disputed domain name, such that the disputed domain name was registered in bad faith.

In addition, the presence of PPC links to third party websites on the page to which the disputed domain name resolves supports a finding of use in bad faith. Indeed, resolving to a webpage with PPC links suggests an intention on the part of the Respondent to exploit and profit from the Complainant's trademark, by attempting to generate financial gains by means of "click through" revenues. Such conduct constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy (see *F. Hoffmann-La Roche AG v. James Lee*, WIPO Case No. [D2009-1199](#); *Scania CV AB v. Michael Montrief*, WIPO Case No. [D2009-1149](#); *Aspen Holdings Inc. v. Rick Natsch, Potrero Media Corporation*, WIPO Case No. [D2009-0776](#); and *AllianceBernstein LP v. Texas International Property Associates*, WIPO Case No. [D2008-1230](#)).

Furthermore, panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the disputed domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers." [WIPO Overview 3.0](#), section 3.4.

In the present case, the Panel finds that the Respondents' conduct of sending at least one fraudulent email to deceive potential candidates to the Complainant's apprenticeship program and obtain confidential and sensitive information constitutes use of the disputed domain name in bad faith.

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

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 <ibmeschoolhiring.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: September 13, 2024