

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Sonu Kushwaha, Scala Programming

Case No. D2025-0007

1. The Parties

The Complainant is International Business Machines Corporation, United States of America ("United States"), self-represented.

The Respondent is Sonu Kushwaha, Scala Programming, India.

2. The Domain Names and Registrar

The disputed domain names <learn-ibm-devops.com> and <learn-ibm-scala.com> are registered with Dynadot Inc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 2, 2025. On January 3, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 3, 2025, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 7, 2025, 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 amended Complaint on January 13, 2025.

The Center verified that the Complaint together with the amended 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 January 20, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 11, 2025.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on February 14, 2025. 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 corporation founded in the United States in 1911, further to the amalgamation of three previously existing companies, and officially became International Business Machines in 1924.

The Complainant, which is a leading innovator 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, has been marketing its products and services worldwide under the trademark IBM ever since.

The Complainant owns numerous trademark registrations for the mark IBM in countries around the world, including United States Registration No. 640606, registered on January 29, 1957, and United States Registration No. 1058803, registered on February 15, 1977 (together hereinafter referred to as: “the Mark”).

The Complainant also owns a trademark registration for the mark DEVOPS NOW, United States Registration No. 6375610, registered on June 8, 2021. No claim is made to the exclusive right to use “DEVOPS”.

The Complainant has been ranked in the top 20 most valuable global brands by leading brand publications, and in 2022 was the 49th largest company on the Fortune U.S. 500 list, and the 168th largest company on the Fortune Global 500 list.

The Complainant is the registrant of a large portfolio of domain names, including <ibm.com>, which directs to its corporate website.

The Respondent, as disclosed by the Registrar after the Complaint was filed, is an individual located in India.

The disputed domain names were registered on March 9, 2024.

The Complainant has submitted evidence that the disputed domain names resolved to websites displaying similar wording and icons, offering online software development training courses purportedly affiliated with the Complainant and inviting Internet users to register their personal information and/or provide monetary compensation for these training courses. The disputed domain name <learn-ibm-devops.com> then resolved to a website displaying pay-per-click content and the disputed domain name <learn-ibm-scala.com> to an inactive page.

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 names.

Notably, the Complainant contends that:

- (i) the disputed domain names reproduce the Mark, in which the Complainant has rights, and are confusingly similar to the Mark insofar as the disputed domain names contains the Mark in its entirety, which remains recognizable in the disputed domain names;

- (ii) it never authorized the Respondent to use the Mark in any manner and it never had any affiliation with the Respondent, who has no rights or legitimate interests in respect of the disputed domain names;
- (iii) the Respondent has registered and is using the disputed domain names in bad faith; in particular, the Respondent had knowledge of the Mark when registering the disputed domain names, and by creating confusion with the Mark for commercial gain, the Respondent is using the disputed domain names in bad faith.

The Complainant requests that the disputed domain names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects – Failure to Respond

Under the Rules, paragraphs 5(f) and 14(a), the effect of a failure to submit a formal response by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain names have been met, even in the absence of a formal response.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's failure to file a formal response as it considers appropriate under the circumstances.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain names, such as making legitimate noncommercial or fair use of the disputed domain names.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

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 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 that despite the addition in final position of the disputed domain names of either the term "devops" or the term "scala", the Mark is recognizable within the disputed domain names.

Although these additions may bear on the assessment of the second and third elements, the Panel finds that such differences do not prevent a finding of confusing similarity between the disputed domain names and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the disputed domain names are confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Regarding the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain names, it is well established that a gTLD does not generally affect the assessment for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

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.

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 names. 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 names such as those enumerated in the Policy or otherwise.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names. Particularly, the use of the disputed domain names to offer online courses that purport to be associated with the Complainant, while in fact no such relationship exists, cannot confer rights or legitimate interests on the Respondent.

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.

The Respondent’s use of the disputed domain names to incite unsuspecting Internet users to purchase training courses connected with the Complainant’s products or services (such as “DevOps”) or to a specific programming language (such as “Scala”), evidences an intent to exploit the Mark for commercial gain.

In the present case, the Panel notes that with respect to the disputed domain names, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites or the services offered on the Respondent’s websites.

The current non-use of the disputed domain name <learn-ibm-scala.com> does not prevent a finding of bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <learn-ibm-devops.com> and <learn-ibm-scala.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: February 24, 2025