

ADMINISTRATIVE PANEL DECISION

International Baccalaureate Organization v. IB Latinos
Case No. D2023-4344

1. The Parties

The Complainant is International Baccalaureate Organization, Switzerland, represented by Pellervo B.V., Netherlands.

The Respondent is IB Latinos, Peru.

2. The Domain Name and Registrar

The disputed domain name <ibdocs.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 25, 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 October 26, 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 November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 24, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on December 15, 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 appears to have been established in 1968 in Geneva, Switzerland, some six years after the International Schools Association conference of teachers recommended that the International Passport of Higher Education be called the "International Baccalaureate" (IB).

In 1970, students in 12 schools from 10 countries took the first official IB exams. In 1994, middle years programs were added. In 1997, primary years programs were added. In 2006, learner diploma programs were added, and career related programs were introduced in 2012.

The Complainant currently offers its IB programs in over 159 countries through 5,400 schools. The Complainant's four IB programs are being undertaken by 1.95 million students aged from 3 to 19 around the world.

The Complainant's Facebook page has 171,000 followers; one of its LinkedIn accounts, 250,000 followers and, according to the Complaint, it has over 33,700 subscribers to its Instagram account and more than 70,000 followers on Twitter (X).

The Complainant has registered numerous domain names. These include <ibo.org> which has been registered since February 1996.

The Complainant states it has 435 valid and enforceable registered trademarks around the world. Annex 4 to the Complaint includes details of these. It is plain from the details included in the Complaint that these registrations are for a variety of marks. For example, one of the earliest registrations, dating from 1999, are for the words INTERNATIONAL BACCALAUREATE. For example, United States of America ("United States") Registered Trademark No. 2,637,895.

A second trademark is what the Complainant describes as the IB Corporate Trilingual Logo. This mark consists of the "IB button" (see below) and the words "International Baccalaureate" in English and two other language equivalents. The earliest of these trademarks date from 2007 or 2008. For example, Switzerland Registered Trademark No. P-561836.

A third trademark is the "IB button" which is a device consisting of the letters "I" and "B" enclosed within a segmented circle. The earliest registrations of this trademark are European Union Trademark No. 010915312, which has been registered with effect from May 25, 2012 in respect of a range of goods and services in International Classes 9, 14, 16, 18, 25 and 41 and United States Registered Trademark No. 4156996, which was registered in the Principal Register on June 12, 2012. In Peru, this trademark is Registration No. 78363 which was registered in International Class 41 on September 16, 2013.

The Complainant also has a registration for IB alone: Swiss Registered Trademark No. 623387, which was registered in International Class 41 on December 2, 2011.

The disputed domain name was registered on December 3, 2021.

When the Complaint was filed, the disputed domain name resolved to a webpage which featured sketches of two human heads, one masked and a countdown to the upcoming IB examination sessions in November 2023. The website is indexed in the Google Search Engine with a strapline or description “IB Resources and Websites”.

5. Discussion and Findings

No response has been filed. The Complaint, the Notification of Complaint, and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark rights.

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.

Therefore, there are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the Swiss registration for IB and numerous registrations for the “IB button” trademark.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademark in this case. Accordingly, it is appropriate to apply the usual rule.

On this approach and disregarding the “.com” gTLD, the disputed domain name consists of the Complainant's registered trademark and the string “docs”. This additional string can be seen as an abbreviation for “documents”. As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 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.

The Respondent registered the disputed domain name long after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name could arguably be derived, at least in part, from the name of the Respondent and so, paragraph 4(c)(ii) could arguably apply. However, it is obvious that the Respondent's name is an assumed or invented name.

Paragraph 4(c)(ii) recognises that a person may legitimately wish to adopt a domain name which reflects his, her or its own name and may very well do so without any intention to trade on the reputation or significance of some other person's trademark. Reasonably, this principle extends to names by which a person is commonly known, not just his, her or its formal name.

This rationale does not necessarily apply to an assumed or invented name especially where the name closely resembles someone else's trademark and is adopted after that trademark became public, especially where the trademark is very widely known. In such circumstances, it cannot simply be assumed that the innocent explanation underlying paragraph 4(c)(ii) of the Policy necessarily applies. Accordingly, where an invented or assumed name closely resembles someone else's trademark and there is no authorised connection between the two, it is typically necessary for some explanation about how and why the invented name came to be adopted.

In the present case, there is no such explanation or information.

The content of the website provides in a very limited way some information about past and upcoming IB examination sessions, while reproducing two images which are, or are based on, the Wojak Internet meme. A variation of the Complainant's "IB button" trademark is indexed in Google images in relation to the website at the disputed domain name in conjunction with another Internet meme. The use of the Internet memes may suggest some sort of humorous or parodic purpose. However, the website is also indexed in the Google Search engine with the strapline "IB Resources and Websites", which suggests the possibility of some informational or commercial purpose. The Respondent has not sought to explain what he or she was intending or in fact doing. Moreover, the limited material on the website, although the disputed domain name has been registered for two years, does not provide much assistance in this respect.

Looking at the criteria by which Panels have assessed claims to rights or legitimate interests in fan sites or by resellers (respectively, [WIPO Overview 3.0](#), section 2.7 and 2.8), the disputed domain name is not identical to the Complainant's trademark. Nonetheless, there is still a high potential for implied affiliation with the Complainant and its IB program.

Given the very limited information provided on the website, it is very difficult to characterize the Respondent as actually offering goods or services related to the IB program, especially having regard to the passage of two years since the disputed domain name was registered. Most importantly, the website to which the disputed domain name resolves does not accurately and prominently disclose the Respondent's relationship (that is, that it is not associated) with the Complainant.

Given this and having regard to the risk of implied affiliation resulting from the correspondence of the disputed domain name to the Complainant's trademark, which is only reinforced by the "docs" string, the Panel finds that the Respondent cannot rely on paragraph 4(c)(iii) of the Policy either.

Accordingly, the Complainant has established the required *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name and the Respondent has not attempted to rebut that *prima facie* case.

Therefore, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Bum World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

Given the content of the website to which the disputed domain name resolves, the Panel readily finds that the Respondent was aware of the Complainant's trademark before registering the disputed domain name.

The Complainant contends that the Respondent registered the disputed domain name with the goal of distributing unauthorised copyright materials about the Complainant's programs. Additionally, the Complainant alleges that the Respondent may have an intention to mirror another third party site, "www.ibdocs.org", which is the subject of a separate complaint, WIPO Case No. [D2023-4345](#).

The Panel is unable to accept the second part of this allegation as, according to the WhoIS record for <ibdocs.org>, that domain name was registered in March 2023 – more than 12 months after the registration of the disputed domain name.

On the very limited material available, it also appears far too speculative to find that the Respondent necessarily intends to distribute unauthorised copyright materials.

However, it is necessary to bear in mind that the disputed domain name and the website to which the disputed domain name resolves carry a risk of implied affiliation with the Complainant and do not properly disclose the nature of the Respondent's relationship to the Complainant and its programs. In the absence of rights or legitimate interests in the disputed domain name, therefore, the registration and use of the disputed domain name with such a misleading and deceptive character is registration and use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <ibdocs.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: December 29, 2023