

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation (IBM) v. Rishikesh Mukund,
IBM India

Case No. D2022-3056

1. The Parties

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

The Respondent is Rishikesh Mukund, IBM India, India.

2. The Domain Name and Registrar

The disputed domain name <ibmindias.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 August 18, 2022. On August 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 19, 2022, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 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 September 15, 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 September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. On September 18, 2022, the Center received an email communication from the Respondent. On September 29, 2022, the Center suspended the

proceedings on the Complainant's request. On October 18, 2022, the Center reinstated the proceedings on the Complainant's request.

The Center appointed Alistair Payne as the sole panelist in this matter on November 8, 2022. 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 very well-known and long established Fortune 500 corporation operating in the information technology sector. It trades under the very well reputed IBM mark for which it owns numerous trade mark registrations worldwide including United States trade mark registration 4181289 registered on July 31, 2012. In 2021, it was the 42nd largest company in the Fortune U.S. 500 list and was ranked as the 18th best global brand by Interbrand. The Complainant owns numerous domain names that incorporate the IBM mark including <ibmindia.com> which redirects to the Complainant's official website at its <ibm.com> domain name.

The disputed domain name was registered on January 21, 2022, by the Respondent who is an individual listed in the registrant details provided upon registrar verification as being part of "IBM India". The Complainant registered the disputed domain name through a privacy shield service and diverts Internet users to a pay-per-click parking page with advertisement links to products and services which have been, or are being used by the Complainant in connection with the IBM trade mark,.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered rights for its IBM trade mark as set out above and that the IBM trade mark is wholly incorporated into the disputed domain name and the disputed domain name is therefore confusingly similar to its trade mark. It says that the addition of the geographical term "india" plus the letter "s" (which it says amounts to a misspelling of "India") in the disputed domain name does not prevent a finding of confusing similarity.

The Complainant submits that it has never licensed, contracted, or otherwise permitted the Respondent to apply to register the disputed domain name. Furthermore, says the Complainant, there is no evidence that the Respondent has been commonly known by the disputed domain name or that the Respondent is using it for a *bona fide* offering of goods or services. On the contrary, the Complainant says that the Respondent has configured an email server on the disputed domain name which indicates the intention of the Respondent to use the disputed domain name for purposes other than hosting a website, including potentially for email phishing, or other deceptive purposes. Additionally, the Complainant notes that the Respondent has been actively using the IBM trade mark in the disputed domain name to derive illegitimate commercial gains by intentionally attempting to confuse Internet users by pointing the disputed domain name to a pay-per-click parking page with advertisement links which contain references to technology-related products and services. Further, the Complainant submits that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name was only registered in January 2022, many years after the Complainant's registration and first use of the IBM trade mark and considering the degree of repute attaching to the IBM mark the Respondent must have been aware of it when he registered the disputed domain name.

The Complainant also notes that it has an active business in India with the domain name <ibmindia.com> which redirects to the Complainant's main website at "ibm.com" and only differs from the disputed domain name by the addition of an "s". According to the Complainant, this amounts to an opportunistic registration aiming to take advantage of a likely typographic error that Internet users may make when seeking the Complainant's website.

The Respondent has connected the disputed domain name to a mail server responsible for sending and accepting email messages on behalf of the disputed domain name. This, says the Complainant, suggests that the Respondent may have intended to use the disputed domain name for phishing or other fraudulent purposes.

The Complainant has in evidence provided a report which suggests that the disputed domain name is associated with an IP address that is linked to anonymisation services, the dissemination of malware and botnet command and control servers. It further says that this IP address is linked to activities related to cryptocurrency mining which allows domain name owners to capitalize off visitor's computer CPU power to mine cryptocurrency. The Complainant says that the higher the number of visitors and the longer each visitor remains on the site the more CPU power is generated for the website owner to mine cryptocurrency.

In terms of paragraph 4(b)(iv) of the Policy, the Complainant submits that the disputed domain name diverts to a pay-per-click parking page with advertisement links containing products or services which are currently, or have been in the past, used in connection with the IBM trade mark.

The Complainant notes that on January 24, 2022, it sent a cease and desist letter to the Respondent through the GoDaddy email address listed in the Whois records and also sent a follow up letter in February 2022, but received no response to either letter.

B. Respondent

The Respondent did not formally reply to the Complainant but indicated by email on September 18, 2022, as follows:

"I am not using this email address. By mistake i used this domain. Domain is not registered with any company or website. I wad just checking how to creat a domain".

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns various registered trade marks for IBM, including United States trade mark registration 4181289 registered on July 31, 2012. The disputed domain name wholly incorporates the Complainant's IBM mark and is therefore confusingly similar to it. The addition of the geographical term "India" and of the letter "s" after it, does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that it has never licensed, contracted, or otherwise permitted the Respondent to apply to register the disputed domain name. It has asserted that there is no evidence that the Respondent has been commonly known by the disputed domain name, or that the Respondent is using it for a *bona fide* offering of goods or services. The Respondent has configured an email server on the disputed domain name which, according to the Complainant indicates the intention of the Respondent to use the disputed domain name for purposes other than hosting a website, including potentially for email phishing, or other deceptive purposes. Additionally, the Complainant notes that the Respondent has been actively using

the IBM trade mark in the disputed domain name to derive illegitimate commercial gains by intentionally attempting to confuse Internet users by pointing the disputed domain name to a pay-per-click parking page with advertisement links which contain references to technology-related products and services. Further, the Complainant submits that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights to or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant's case and for these reasons and for the reasons set out under Part C below, the Panel finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was only registered in January 2022 many years after the Complainant's registration and first use of the IBM trade mark. Considering the degree of repute attaching to the IBM mark internationally and that the Complainant has a business in India operating under the IBM mark, the Panel finds that the Respondent must have been aware of the Complainant and its IBM mark when he registered the disputed domain name. Moreover, given the typosquatting nature of the disputed domain name as compared to the Complainant's domain name <ibmindia.com>, the Respondent was clearly aware of and intended to cause confusion with the Complainant.

The report provided in evidence by the Complainant suggests that the disputed domain name is associated with an IP address that is linked to anonymisation services, the dissemination of malware and botnet command and control servers and is linked to activities related to cryptocurrency mining. The Panel finds that this report is suggestive of use in bad faith but is not conclusive in that regard as it does not categorically state that the Complainant is actively using the disputed domain name for these purposes.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

It is clear that the Respondent has diverted the disputed domain name to a pay-per-click parking page with advertisement links containing information technology related products or services which are likely to be in current competition with the Complainant's services, or which may well have been used in the past in connection with the IBM trade mark. Intentionally confusing and diverting Internet users in this way to a pay per click parking site containing links to services which have been or are in competition with those of the Complainant fulfills the requirements of paragraph 4(b)(iv) of the Policy and amounts to evidence of registration and use of the disputed domain name in bad faith.

With this background and considering that the Respondent has used a privacy service to mask his identity, the Panel finds the Respondent's explanation in his email of September 18, 2022, less than credible. Further, the Respondent failed to reply to the Complainant's pre-action cease and desist letter. These factors, together with the fact that the Respondent attempted to mask its identity in each case by using a privacy service, only reinforces the Panel's view of the Respondent's use in bad faith of the disputed domain name.

The Panel therefore finds that the disputed domain name has been both registered and used in bad faith and that the Complaint also succeeds under this 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, <ibmindias.com>, be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: November 22, 2022