

ADMINISTRATIVE PANEL DECISION

Software Brokers of America, Inc. d/b/a Intcomex v. Tharwat Kabira
Case No. D2023-2781

1. The Parties

The Complainant is Software Brokers of America, Inc. d/b/a Intcomex, United States of America (“United States”), represented by Ferraiuoli LLC, Puerto Rico.

The Respondent is Tharwat Kabira, Germany.

2. The Domain Name and Registrar

The disputed domain name <inticomex.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 2023, 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 3, 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 July 7, 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 July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 10, 2023.

The Center appointed Mladen Vukmir as the sole panelist in this matter on September 4, 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

- (i) The Complainant is Software Brokers of America, Inc., d/b/a Intcomex, incorporated in Florida, United States. It operates in the field of information technology product distribution;
- (ii) The Complainant is the owner of INTCOMEX trademark registered before the United States Patent and Trademark Office on January 5, 1999, under the registration number 2216461 (“INTCOMEX trademark”);
- (iii) The Respondent is the registrant of the disputed domain name, as disclosed by the Registrar; and
- (iv) The disputed domain name was registered on May 12, 2023, and is being used for sending emails to the Complainant’s clients about account status information and payment requests.

5. Parties’ Contentions

A. Complainant

The Complainant, essentially, asserts the following:

- (i) The Complainant is the sole owner of INTCOMEX trademark which is duly registered before the United States Patent and Trademark Office under Reg. No. 2216461 on January 5, 1999. The INTCOMEX trademark is used in connection with distributorship services in the field of computer products;
- (ii) The disputed domain name is identical or confusingly similar to the Complainant’s INTCOMEX trademark. The only difference between the Complainant’s INTCOMEX trademark and the disputed domain name is the addition of the letter “i” before the letter “c” in the word “intcomex”. As such, the disputed domain name is both visually and phonetically confusingly similar to the Complainant’s INTCOMEX trademark;
- (iii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has been using its INTCOMEX trademark since at least 1993. The Respondent has registered the disputed domain name on May 12, 2023, and, on the same date, began sending emails to the Complainant’s clients regarding their account status information and payment requests. Accordingly, the Respondent has been using the disputed domain name to falsely depict the Complainant’s employees. Thus, the Respondent’s sole purpose for using the disputed domain name is to engage in fraud and/or criminal activity. The Respondent’s use of the disputed domain name shows that the Respondent holds no rights or legitimate interests with respect to the disputed domain name;
- (iv) The disputed domain name was registered and is being used in bad faith. The Respondent has been using the disputed domain name to direct the Complainant’s clients, under false pretenses, to provide sensitive information.
- (v) The Complainant is the registrant of the domain name <intcomex.com>, which was registered on April 13, 1996.

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of Response, the Policy, the Rules, the Supplemental Rules and other applicable legal authority pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that a complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

According to Section 4.2. of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the applicable standard of proof in UDRP cases is the “balance of probabilities”. Under this standard, a party should demonstrate to a UDRP panel’s satisfaction that it is more likely than not that a claimed fact is true. While the UDRP does not operate on a strict doctrine of binding precedent, it is considered important for the overall credibility of the UDRP system. Although the Complainant did not elaborate in detail the aforementioned elements ii) and iii) provided under paragraph 4(a) of the Policy, nor cited earlier UDRP decisions to support its arguments, this Panel establishes that the Complainant fulfilled the applicable standard of proof in UDRP cases.

A. Identical or Confusingly Similar

Under general consensus view, the mere fact of ownership of a registered trademark by the complainant is generally sufficient to satisfy the threshold requirement of having trademark rights (see section 1.1 of the [WIPO Overview 3.0](#)). The Complainant has submitted evidence to prove its ownership of INTCOMEX trademark.

It is well established that the threshold test for confusing similarity under the UDRP involves a comparison between the complainant’s trademark and the disputed domain name to determine if it is identical or confusingly similar. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. Application of the confusing similarity test under the UDRP typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see sections 1.7 and 1.8 of [WIPO Overview 3.0](#)).

After performing the side-by-side comparison of the disputed domain name and INTCOMEX trademark, it is evident to the Panel that the disputed domain name incorporates the Complainant’s INTCOMEX trademark in its entirety, with the addition of the letter “i”. As such, the same trademark is clearly recognizable within the disputed domain name.

In this Panel’s view, addition of letter “i” in case of the disputed domain name can be seen as an intentional misspelling of the Complainant’s INTCOMEX trademark, *i.e.*, typosquatting. As provided in section 1.9 of [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark should be considered as confusingly similar to the relevant mark for purposes of the first element.

Regarding the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name, as a standard registration requirement it should be disregarded under the confusing similarity test (see section 1.11.1 of

[WIPO Overview 3.0](#)).

For all the foregoing reasons, the Panel holds that the disputed domain name is confusingly similar to the Complainant's INTCOMEX trademark within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

- “(i) Before any notice to [the respondent] of the dispute, [use by the respondent] 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) [Where 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) [Where 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.”

As noted by previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): “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.”

In this case, the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a) of the Policy. The Complainant provided evidence that the disputed domain name is confusingly similar to the Complainant's INTCOMEX trademark. The Respondent is not authorized by the Complainant to use the disputed domain name, and there is no indication that the Respondent is known under the disputed domain name. There is no apparent relation from the records between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its INTCOMEX trademark, or to apply for or use any domain name incorporating the same trademark.

Furthermore, there is no evidence in the present submissions or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name.

As that here is no evidence that the Respondent is in any way permitted by the Complainant to use the INTCOMEX trademark nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of INTCOMEX trademark, the Panel concludes that the Respondent has no rights or legitimate interest to use the disputed domain name which includes the Complainant's INTCOMEX trademark, misspelled by adding the letter “i”.

The Respondent has failed to provide any reply to the Complaint, and accordingly failed to prove that it has rights or legitimate interest in the disputed domain name.

The Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant's making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent's failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.”

The Complainant filed the evidence proving that the disputed domain name has been used for sending emails to the Complainant's clients about account status information and payment requests. The Panel accepts the Complainant's argument that the Respondent has deceitfully posed as an employee of the Complainant with the intention of obtaining sensitive information from the Complainant's clients, exploiting their trust and confidence. As UDRP panelists in previous cases have affirmed, respondents posing as the complainant's employees in order to send phishing emails to complainant's clients serve as a proof of registration and use of the disputed domain name in bad faith. In *BHP Billiton Innovation Pty Ltd. v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#), the panel has concluded that the use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith. The aforementioned stance had also the panel in *National Westminster Bank plc v. Sites / Michael Vetter*, WIPO Case No. [D2013-0870](#), among other cases.

Accordingly, this Panel has considered the relevant factors as the degree of distinctiveness (addition of the letter “i” to the word “intcomex”), the reputation of the Complainant's trademark, the deceitful posing by the Respondent as the Complainant's employee in order to obtain sensitive information from the Complainant's clients, the failure of the Respondent to provide any evidence of actual or contemplated good-faith use, the Respondent concealing its identity, and the implausibility of any good faith use to which the disputed domain name may be put. See section 3.4 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Respondent, by registering and using the disputed domain name, is attempting to take advantage of the Complainant's reputation by creating a likelihood of confusion with the Complainant. The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has fulfilled the third element.

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, <inticomex.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: September 18, 2023