

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Milen Radumilo
Case No. D2023-2971

1. The Parties

Complainant is International Business Machines Corporation, United States of America (“United States”), internally represented.

Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <ibm-istitute.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 11, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 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, Contact Privacy Inc. Customer 0166078329) and contact information in the Complaint. The Center sent an email communication to Complainant on July 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 14, 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 Respondent of the Complaint, and the proceedings commenced on July 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 10, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on August 16, 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

Complainant is a company organized under the laws of the United States that is active in the computer industry.

Complainant has evidenced to be the registered owner of numerous trademarks relating to its company name and brand IBM, including, but not limited, to the following:

- word mark IBM, United States Patent and Trademark Office (USPTO), registration number: 1,243,930, registration date: June 28, 1983, status: active;
- word mark IBM, USPTO, registration number: 1,694,814, registration date: June 16, 1992, status: active.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Romania who registered the disputed domain name on December 31, 2022. By the time of rendering this decision, the disputed domain name resolves to an unrelated website showing a blank page. Complainant, however, has demonstrated that at some point before the filing of the Complaint, *e.g.* on January 2, 2023, and on April 11, 2023, the disputed domain name resolved to a typical pay-per-click (PPC) website with hyperlinks to active third party websites, some of which directly related to Complainant and the computer industry, while others did not, and where the disputed domain name was offered for online sale. Also, Complainant showed that Respondent has configured an email server on the disputed domain name, and that there are technical reasons to believe that the disputed domain name is associated with an IP address linked to dissemination of malware and “botnet” command and control servers, designed to *e.g.* gather sensitive information such as financial data.

On January 10, 2023, and on January 25, 2023, Complainant sent cease-and-desist notices to Respondent, to which the latter did not reply.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that, tracing its roots to the 1880s, Complainant is and has been 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, and that, due to *e.g.* extensive marketing efforts, Complainant's IBM trademark is meanwhile considered to be world-famous.

Complainant further submits the disputed domain name is identical or confusingly similar to Complainant's IBM trademark as it consists of the letters “ibm” as in this trademark, together with the word “istitute” as a misspelling of the word “institute”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has never licensed, contracted, or otherwise permitted Respondent to apply to register the disputed domain name, (2) Respondent has been actively using Complainant's IBM trademark in the disputed domain name to derive

illegitimate commercial gains by intentionally attempting to create a likelihood of confusion through pointing the disputed domain name to a PPC page in the recent past, and (3) Respondent has configured an email server on the disputed domain name. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) given that Complainant's IBM trademark is well known around the world, Respondent was well aware thereof at the time it registered the disputed domain name, (2) Respondent continued to use the disputed domain name for illegitimate commercial gains via a PPC website even after receiving a cease-and-desist letter from Complainant regarding the use of Complainant's IBM trademark, (3) by using Complainant's IBM trademark in the disputed domain name, and pointing it to PPC advertisements, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion, with Complainant's IBM trademark as to the source, sponsorship, affiliation or endorsement of its website, (4) the Whois records indicate that the disputed domain name is associated with an IP address linked to dissemination of malware and "botnet" command and control servers, and (5) Respondent has connected the disputed domain name to a mail server likely for phishing or other fraudulent purposes, and the dissemination of malware through a domain name (as in the case at hand) is often done to steal consumer information for commercial gain, and is, thus, evidencing bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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 Complainant's IBM 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.

Based on the available record, the Panel finds 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 entirety of Complainant's IBM trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here the term "istitute" as an obvious misspelling of the term "institute") 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 Complainant's IBM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed 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.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Moreover, Panels have held that the use of a domain name for illegal activity (e.g., Respondent's configuration of an email server on the disputed domain name, likely for phishing or other fraudulent purposes, as well as association of the disputed domain name with an IP address linked to dissemination of malware and "botnet" command and control servers, designed to e.g. gather sensitive information such as financial data) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Panel considers that the record of this case reflects that:

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's IBM trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Also, panels under the UDRP have held that the use of a domain name for illegal activity (e.g., Respondent's configuration of an email server on the disputed domain name, likely for phishing or other fraudulent purposes, as well as association of the disputed domain name with an IP address linked to dissemination of malware and "botnet" command and control servers, designed to e.g. gather sensitive information such as financial data) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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

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, <ibm-istitute.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: August 22, 2023