

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Carolina Rodrigues Case No. D2023-3500

1. The Parties

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

The Respondent is Carolina Rodrigues, Panama¹.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 18, 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 August 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 did not reply to the Center’s communication.

The Center verified that 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”).

¹ The Panel notes that the Complaint indicates as the Respondent “John Doe”. The Center informed the Complainant that the underlying registrant of the Disputed Domain Name is “Carolina Rodrigues”. The Panel notes that the Complainant did not amend the Complaint to refer to “Carolina Rodrigues”. However, for the purposes of this decision, the Panel finds that the underlying registrant, “Carolina Rodrigues”, is the Respondent in this matter.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 13, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on October 26, 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 is a company engaging primarily in the manufacturing of computers and global provision of computer-related goods and services. The Complainant has been using its current company name International Business Machines and its abbreviation "IBM" since February 14, 1924. The Complainant also owns the company TWC Product and Technology, LLC which operates the business "The Weather Channel" (the "Complainant's Weather Business"). The Complainant owns various word and figurative trademarks for or containing IBM ("Complainant's Trademark") around the globe.

The relevant trademark registrations include, *inter alia*, US Trademark No. 4181289 for "IBM", registered on July 31, 2012, in Classes 9, 16, 18, 20, 21, 22, 25, 28, 35, and 41; US Trademark No. 3002164 for IBM, registered on September 27, 2005, in Class 9; US Trademark No. 1696454 for IBM, registered on June 23, 1992, in Class 36; US Trademark No. 1694814 for IBM, registered on June 16, 1992, in Class 36; US Trademark No. 1243930 for IBM, registered on June 28, 1983, in Class 42; US Trademark No. 1205090 for IBM, registered on August 17, 1982, in Classes 1, 9, 16, 37, and 41; US Trademark No. 1058803 for IBM, registered on February 15, 1977, in Classes 1, 9, 16, 37, 41, and 42; and US Trademark No. 0640606 for IBM, registered on January 29, 1957, in Class 9.

The Complainant's Trademark is also fully incorporated in the Complainant's domain name <ibm.com>, which resolves to the Complainant's website.

The Disputed Domain Name was registered on January 3, 2023. At the time of filing of the Complaint, the Disputed Domain Name resolved to a website comprising pay-per-click ("PPC") advertising links to "Perillo Tours Italy", "Contact Support", and "Lenovo Support" (the "Respondent's Website"). Moreover, the Complainant has provided evidence that the IP address associated with the Disputed Domain Name is linked to anonymization services, malware distribution, botnet command, and control servers. At the time the Panel was rendering her decision, the Respondent's Website displayed PPC advertising links to "Contact Support", "Amplifiers", and "Server".

5. Parties' Contentions

A. Complainant

(a) The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark. The only difference between the Disputed Domain Name and the Complainant's Trademark is the presence of the terms "weather" and "customer support", as well as the generic Top-Level Domain ("gTLD") ".com". The term "weather" directly describes the Complainant's Weather Business, while the generic phrase "customer support" is a common term indicating any service that assist customers with a company's products or services, which increases the degree of consumer confusion between the Disputed Domain Name and the Complainant's Trademark. Moreover, the gTLD may be disregarded.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any license, contract, or authorization from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. The Respondent is not commonly known by the Disputed Domain Name. Moreover, the Disputed Domain Name appears to be registered by the Respondent for the purposes of generating illegitimate commercial gain from the Complainant by diverting Internet traffic to PPC websites, configuring email servers for potential deceptive purposes, and potentially distributing malware and botnets. The Respondent has continued using the Respondent's Website despite receiving a cease-and-desist letter from the Complainant. This does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Disputed Domain Name.

(c) Both the Respondent's registration and use of the Disputed Domain Name establish the Respondent's bad faith. The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark, which creates a presumption of bad faith against the Respondent. The Respondent's use also demonstrates bad faith where links distributing malware and botnets and PPC links on the Respondent's Website compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users, in particular the reference to technology-related products and services "Lenovo Support". Given the publicity and reputation of the IBM brand, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Disputed Domain Name also creates a likelihood of confusion as to the Respondent's relationship with the Complainant. The Respondent did not reply to the Complainant's cease-and-desist letter asking the Respondent to disable and transfer the Disputed Domain Name to the Complainant. Lastly, the Respondent used a privacy shield service to mask her identity.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as those listed in Section 4.

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the terms "weather" and "customer support". UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Furthermore, it is well established that the gTLD, ".com" in this case, may be disregarded. See section 1.11 of the [WIPO Overview 3.0](#). The Panel therefore agrees with the Complainant that the additional terms do not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (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 name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent 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.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services or be regarded as legitimate noncommercial or fair use. UDRP panels have categorically held that illegal activity, such as distributing malware or botnets as the case here, can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#). The PPC links on the Respondent's Website also do not represent a *bona fide* offering since such links are being used to compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Moreover, the composition of the Disputed Domain Name, which incorporates the Complainant's Trademark with the term "weather", carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant or its Weather Business. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

After reviewing the evidence submitted by the Complainant, the Panel agrees that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for "IBM" relate to the Complainant's business and/or third-party websites providing information relating to the Complainant's business. Therefore, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name. This is especially the case when the Respondent added the term "weather" in the Disputed Domain Name when the Complainant indeed operates the Complainant's Weather Business, and after the Complainant sent the Respondent a cease-and-desist letter on January 2, 2023.

In addition, the Panel finds that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The IP address associated with the Disputed Domain Name is linked with the dissemination of malware and botnets. Such illegal activity is manifestly considered evidence of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).
- (ii) Besides, it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety. It can be inferred that the Respondent used the Disputed Domain Name to earn click through revenue from the misdirection of Internet users to the Respondent's Website and PPC links (including one that competes with the Complainant) caused by the confusing similarity of the Disputed Domain Name to the Complainant's Trademark (see *Société Louis Delhaize Financière et de Participation (DELFI PAR) v. Privacy service provided by Withheld for Privacy ehf / Vallee Virginie*, WIPO Case No. [D2021-4126](#); and section 3.1.4 of the [WIPO Overview 3.0](#)). Such circumstances are evidence of registration and use of the Disputed Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).
- (iii) The Respondent has a history of cybersquatting. In *Carvana, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-1274](#), the panel found that the Respondent has demonstrated "a clear pattern of targeting trademarks". Since 2012, transfer has been ordered against the Respondent in hundreds of other UDRP proceedings, indicating the Respondent's pattern of bad faith.
- (iv) The Respondent registered the Disputed Domain Name using a privacy shield to conceal her identity (see *Primonial v. Domain Administrator, PrivacyGuardian.org / Parla Turkmenoglu*, WIPO Case No. [D2019-0193](#)).
- (v) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of her actual or contemplated good faith use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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 <weathercustomersupportibm.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: November 9, 2023