

## **ADMINISTRATIVE PANEL DECISION**

IBA SA v. Ousmane Ba  
Case No. D2023-3619

### **1. The Parties**

The Complainant is IBA SA, Belgium, represented by Sybarius, Belgium.

The Respondent is Ousmane Ba, United States of America (“US”).

### **2. The Domain Name and Registrar**

The disputed domain name <iba.com> (the “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 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 1, 2023. In accordance with the Rules, paragraph 5, the initial due date for Response was September 21, 2023, and upon the Respondent’s request dated September 19, 2023, the due date for Response was extended to September 25, 2023, under paragraph 5(b) of the Rules. The Response was filed with the Center on September 26, 2023. On September 26, 2023, the Complainant’s representative sent a communication to the Center objecting to the Response being admitted on the grounds it was out of time. On October 2, 2023, the Center informed the Respondent it would be for the Panel to decide whether to admit the Response. Subsequent correspondence from the Respondent to the Center stated that the Response had been filed in time as it was filed on September 25, 2023 in his time zone. He also says in any event it was before the Panel had been appointed and requested that the Response be admitted.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 3, 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 Belgian company. It was founded in 1986 as a spin-off from a Belgian university. Its name is an acronym for “ion beam application”. It is a manufacturer of specialized medical equipment. The technology it has developed relates to medical imaging, radiotherapy and “integrated proton therapy centers” which are used in the treatment of certain forms of cancer. The Complainant was listed on the Brussels stock market in 1998. Further details as to the Complainant’s history are discussed below. The Complainant is clearly a very substantial organisation and operates on an international basis – see further the discussion below.

The Complainant is the owner of a number of trademark registrations for the term “IBA”. It draws attention to in particular the following word marks for the term “IBA”: (1) Benelux trademark 1078487 which was registered on June 21, 2005; and (2) international registration no 873782 which was registered on August 23, 2005. The Complainant’s word marks for the term “IBA” are referred to as the “IBA trademark” in this Decision. The Complainant also draws attention to a device mark which it owned and which contained the letters IBA – this was Benelux trademark 482652 registered on March 8, 1990. This trademark expired on March 8, 2020. It is referred to as the “IBA Benelux device trademark” in this decision. The Complainant also owns a number of other device trademarks which feature the letters “IBA”.

The Respondent is an individual based in the US. He also appears to have an address in Mexico.

The Respondent registered the Disputed Domain Name on April 17, 1995. The manner in which the Disputed Domain Name has been used is discussed below.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant submits that the Disputed Domain Name is identical to the IBA trademark. It also says it is confusingly similar to its other trademarks which include the term IBA.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It states that it has never authorized the Respondent to use its IBA trademark, that the Respondent has not been commonly known by that name, and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the Disputed Domain Name. The Complainant says that the Respondent has never used the Disputed Domain Name and therefore cannot have any basis for claiming rights or legitimate interests in it. The Complainant does however go on to say “it appears from the Complainant’s research the Respondent and its alleged company ‘International Business Automation’ are not known or listed for the provision of any goods or services”. It is not clear to the Panel what research the Complainant is referring to in this context.

So far as bad faith is concerned the Complainant says “the Complainant has a better right to the [Disputed] Domain Name because the Respondent is not using it”. The Complainant says the Respondent had actual or constructive notice of its trademark rights because its trademark was well known. Specifically it says that documents it has placed in evidence show that its trademark “had a very solid reputation worldwide at the time of registration of the Disputed Domain Name”. It says as early as the end of the 1980s it was offering its goods and services worldwide including in the US. It says the Respondent cannot credibly claim to have been unaware of the Complainant’s trademark.

The Complainant also relies upon the Respondent's renewal of the Disputed Domain Name as evidencing bad faith. It says these renewals were made "for the sole purpose of selling it to the Complainant at an exorbitant price...". It says in its email of March 11, 2022, "to the Complainant's previous counsel, the respondent acknowledges that he was approached several times by the Complainant regarding the fraudulent nature of these (re)registration, including in 2001. The Respondent has never responded to these invitations other than to invite the Complainant to make a (considerable) offer to purchase".

The Complainant has placed in evidence correspondence it had with a domain name broker in 2021. This correspondence shows the Complainant instructing the broker to seek to obtain the Disputed Domain Name and to offer USD 2,500 for it. The broker responds the following day and says to the Complainant that the Disputed Domain Name is a premium domain name and will likely cost over USD 25,000. It appears from the correspondence that the Complainant chose not to proceed and the broker refunded USD 2,500 to the Complainant. The Complainant says that this correspondence shows the Respondent had rejected the offer of USD 2,500 and was seeking over USD 25,000 (note that the Panel does not think this is what the correspondence shows – see below).

The Complainant has also placed in evidence an email the Respondent sent dated March 11, 2022, apparently to counsel who had previously acted for the Complainant in dealings with the Respondent (possibly in the discussions which the Respondent says took place in 2001 – see below). In this email the Respondent says "If I remember well. I have already been contacted by your clients legal advisors in around 2001 ..... As you well know the above does not apply and your client should know better. The domain was not put to use in the early 2000 due to a securities fraud issue you may contact the FBI with regard to this. If your client is still bent on this after twenty years they should make an offer. Regards". It is not clear to the Panel what preceded this email or what caused the Respondent to write it. The Complainant says this email shows the Respondent "insists" that the Complainant should make a higher offer for the Disputed Domain Name.

The Complainant requests the transfer of the Disputed Domain Name.

## **B. Respondent**

A Response has been filed. For reasons discussed below the Panel will admit the Response even though it was possibly filed late. The Response appears to be a draft document in that it contains alterations and omissions and has text in different colors. Some passages are difficult to follow or make little sense. The Panel will deal with it as best it can. It appears that the main points the Respondent makes are as follows.

The Respondent accepts that the Disputed Domain Name is identical to the IBA trademark. He points out that all of the Complainant's word trademarks were filed at least ten years after the date the Disputed Domain Name was registered.

The Respondent says he is in the information systems and telecommunications business. He says that he has traded as "International Business Automation" since 1995. He provides a detailed resume listing the organisations he has worked for or with over that period. He describes himself as follows: "Mr. Ousmane Ba is a Platinum Basis Consultant, with ten years of SAP experience, works in all areas of the SAP product Landscape. He has over 15 years of professional experience in various responsibilities and industries allowing him to bring to the table an unusual mix of breadth and depth. His range of experience lends itself well to the conception, design, implementation and support of strategic Enterprise wide solutions on a Global scale. Mr. Ba is also often relied upon for escalations/de-escalations and the timely resolution of extremely critical strategic and technical issues in highly visible accounts including, but not limited to; Texas Instruments, Dan River, International Paper, Compaq, Siemens, PG&E, U.S. Generating, U.S. Navy, Duval County, Gillette, Exxon-Mobil, Perrier and many others."

The Respondent says there are many organisations whose abbreviated name is IBA and some are actually named IBA. By way of example, he identifies the International Bar Association, IBA Inc (a US dairy company), IBA SA (a French soap manufacturer), IBA AG (a manufacturer of measurement systems), and the Indian Banking Association.

The Respondent also says both his father and son are named "Iba".

The Respondent denies that the Disputed Domain Name has never been used. He says the earliest entry available on <archive.org> is in 2000. This shows a "snapshot" of a web page which comprises an enquiry form headed "International Business Automation". He says that although this snapshot was taken in 2000 earlier similar usage had occurred. He supports this with reference to a third-party site and a snapshot taken in 1997 of that site. The Panel has not been able to understand this latter evidence as the image in question does not seem to contain anything of relevance.

The Respondent says that in any event the Complainant's own domain name <iba-group.com> does not resolve to an active website.

The Respondent says he does not deal in domain names and originally registered the Disputed Domain Name because it corresponded to his father's name. He then says he used it in relation to a number of technology projects he was working. He says he also owns <iba.net> and uses this domain name for email. He redirects any email sent to the Disputed Domain Name to email addresses at the <iba.net> domain name. The Respondent exhibits some blank invoices which show him using an email address at <iba.net>. The precise date of these invoices is unclear.

The Respondent says that the Disputed Domain Name was stolen from him in 2000 and he had to go to Network Solutions to recover it. He also says that the FBI became involved at about this time in relation to some sort of fraud. The Respondent's evidence as to these matters is unclear and difficult to follow.

The Respondent says that he did not know the Complainant existed until he was contacted in 2001 when the Complainant sought to purchase the Disputed Domain Name from him and he had a cordial meeting with representatives of the Complainant. It is not clear to the Panel what transpired at this meeting though clearly the Complainant did not purchase the Disputed Domain Name. There is no documentation in evidence about this meeting.

The Respondent seeks a finding of Reverse Domain Name Hijacking ("RDNH"). In this regard the main points he makes are as follows: (1) the Disputed Domain Name was registered prior to the Complainant's word mark; (2) the Complainant has failed to provide any evidence that the Respondent was specifically targeting the Complainant in his registration and use of the Disputed Domain Name; (3) the Complainant attempted to deceive the Respondent in communications that preceded the filing of the Complainant by hiring third-party agents to make offers; (4) the Complainant is using the Policy as a Plan "B" option to acquire a domain after commercial negotiations have failed; (5) the Complainant attempts to misrepresent material facts to the panel, or fails to disclose material facts and the Complainant has failed to disclose any information or details regarding the first contact; (6) the Complainant is aware that the Respondent had a legitimate right to the Disputed Domain; (7) the Complainant initiated all contacts with the Respondent; (8) the Complainant claims that the Disputed Domain Name was never used but this could have been answered by the Complainant's first representative/counsel; (8) the Complainant did not disclose or discuss details about the first contact that occurred in 2001; (9) the Complainant has waited 28 years to complain and 22 years after first contacting the Respondent; and (10) the Complainant is assisted by counsel and is using the UDRP for discovery purposes and therefore in bad faith.

## **6. Discussion and Findings**

### **Preliminary Matters – Late Filing of Response**

It may be that the Respondent filed the Response one day after the expiry of the four day extension that had been granted under the Rules. There is however a dispute about this as the Respondent says the Response was filed in time in the time zone he was in. The Panel is not in a position to determine that. In any event even if the Respondent was late the filing was prior to the date when the Panel was appointed, it also

appears from the relevant correspondence that the Respondent had encountered delays in seeking information from witnesses he considered relevant. The Panel cannot see that this possible one day delay in filing the Response has caused any prejudice to the Complainant and (assuming it was filed late) the Panel exercises its discretion to admit the Response.

### **Substantive Matters**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the 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.

#### **A. Identical or Confusingly Similar**

The Complainant has established that it is the owner of the IBA trademark. It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

It does not matter for the purposes of this element that the Disputed Domain Name was registered before the IBA trademark existed – the Panel agrees with the consensus approach as explained in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) section 1.1.3:

“While the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed.”

Registration of a domain name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity under the UDRP. The UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired rights. However, in such circumstances it may be difficult to prove that the Disputed Domain Name was registered in bad faith under the third element of the UDRP. In addition in the present case the IBA Benelux trademark was in existence at the date the Disputed Domain Name was registered – see further the discussion below.

Accordingly the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and the Panel therefore finds that the first element under paragraph 4(a) is satisfied.

#### **B. Rights or Legitimate Interests**

The Respondent says he has used the Disputed Domain Name in connection with some of his business activities conducted under the name “International Business Automation”. If this was the case the Respondent would establish a legitimate interest in the Disputed Domain Name. It seems likely that this is the case – in particular the snapshot from <archive.org> would appear to show that by 2000 at least the Respondent was conducting some business activity using this name. However overall the evidence the Respondent has provided in this regard is relatively limited and in various respects is unclear and difficult to follow. Thus, for example, the Respondent’s further argument that both his father and son are named “Iba” is unsupported by any documentary evidence. Additionally, the Respondent’s claims to have used the term “iba” on invoices and in emails (using <iba.net>) is supported by very limited evidence. In the light of the Panel’s findings in respect of bad faith, below, it is unnecessary for the Panel to consider the totality of this evidence in detail or reach a conclusion on this issue.

### C. Registered and Used in Bad Faith

The Complainant's case rests on the assertion that the Respondent chose to register the Disputed Domain Name because he was aware of the Complainant and its usage of the term "IBA". That argument seems to the Panel to be misconceived.

There seems to be no doubt that the Complainant is a large and successful business. Curiously however the Complainant has not provided up-to-date details about its business but exhibited accounts and other materials that are many years old. These show for example that the Complainant had revenues of around EUR 150 million in 1999. If the evidence was directed at the position in 1995, when the Disputed Domain Name was registered this approach would make sense but that is not the case. Ultimately however this rather odd approach does not affect the Panel's analysis. The Panel is prepared to accept that the Complainant is currently a large and successful business and that even by 1995 the Complainant was a large and successful business which was operating internationally at least to some degree.

However, having a large and successful business does not in itself establish a reputation in the name of the business outside the areas in which the business operates. The term "IBA" is not inherently distinctive. It is a three-letter acronym which, as the Respondent points out, many organisations make use of. The Panel accepts that the Complainant has for many years had a reputation in the term IBA in its specialized field of activity. There is however no evidence before the Panel to suggest that the Complainant is well known, or indeed has any significant reputation, outside its specialized field of activity. There are some three-letter acronyms where an organisation may have developed an extremely strong reputation in the term that allows wider inferences to be drawn – for example see any of the numerous previous cases under the Policy involving Bayerische Motoren Werke AG and the BMW trademark – e.g. – *Bayerische Motoren Werke AG v. Domain Admin*, WIPO Case No. [D2004-0089](#) where the Panel concluded "The evidence presented by the Complainant demonstrates without doubt that the Complainant's trademark BMW has long been a federally registered trademark in the United States. The mark must be considered to be famous and has substantial value on account of its recognition and goodwill".

The evidence in the present case does not establish that the Complainant's IBA trademark is famous. The Panel is not willing to infer that even at today's date persons not familiar with the field(s) of medical equipment and/or imaging technology and/or proton beam technology would have any awareness at all of the Complainant or its IBA trademark. The position is even less clear in 1995 when the Disputed Domain Name was registered. The Complainant existed at that date and the Complainant asserts (without any supporting evidence) that it had a reputation in the US at that time. The Complainant itself says it had a "solid reputation" at this date. That may have been so in its field of activity but does not establish its trademark was well known generally.

In the circumstances, the Panel considers there is no reason to doubt the Respondent's evidence that he had no knowledge of the Complainant and its IBA trademark when he registered the Disputed Domain Name. In 1995 the only relevant registered trademark the Complainant owned was in the form of the IBA Benelux device trademark (which is now expired). There is no reason the Respondent should have known of that trademark. There is really no evidence as to the extent of the Complainant's reputation in the term IBA in the US at this date and nothing at all to suggest it had any reputation outside the Complainant's specialized field of activity. The Panel adopts the approach described in [WIPO Overview 3.0](#) at section 3.2.2: "On the other hand, where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location, panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark."

The Panel concludes that on the evidence it is more likely than not that the Respondent did not register the Disputed Domain Name with knowledge of the Complainant's trademark nor with the intention of taking unfair advantage of that trademark, and cannot therefore have registered it in bad faith for the purposes of the Policy.

Since the requirement under paragraph 4(a)(iii) is conjunctive, *i.e.*, the Disputed Domain Name must have been both registered and used in bad faith, the Complaint must therefore fail. The Panel would in any event add that it does not consider there is any evidence the Disputed Domain Name has been used in bad faith. Renewal of a domain name which is legitimately held does not amount to an act of bad faith even if by the renewal date the Respondent has become aware of the Complainant and its trademark. In the present case it appears that the Respondent will have had such awareness by around 2001 as it appears the Complainant attempted to purchase the Disputed Domain Name then – see discussion below.

The Complainant's suggestion that it has a better right to the Disputed Domain Name than the Respondent because the Respondent is not using it is simply wrong. Even if the Respondent is not using the Disputed Domain Name (and the evidence on this is unclear) there is no obligation on a domain name holder to make use of a domain name. Whilst "passive holding" of a domain name can in some circumstances support a finding of bad faith this requires there to be other factors indicating bad faith also present – see [WIPO Overview 3.0](#) at section 3.3. That is not the case here.

The Panel does not agree that the correspondence the Complainant had in 2021 with a domain broker shows that the Respondent rejected the Complainant's offer of USD 2,500 and asked for more than USD 25,000. As the Panel reads that correspondence it is the broker itself telling the Complainant that the offer it has been instructed to make will be too low and the Complainant should offer over USD 25,000 if it wishes to make a credible offer. In any event there is nothing inherently wrong in asking a high price for a domain name which is legitimately held and the fact that the Disputed Domain Name is, as the broker put it "a premium domain name" would mean that such a suggestion was not surprising. The Respondent has subsequently indicated to the Complainant that if it wants to purchase the Disputed Domain Name it should make an offer. There is nothing wrong with this. Offering for sale, or inviting offers to purchase, a legitimately held domain name is not *per se* a bad faith use.

It may well be the case that the Complainant would like to own the Disputed Domain Name and finds itself at a disadvantage if it cannot, but these are not reasons supporting a finding of bad faith.

Accordingly the Panel concludes the Complainant has failed to establish that the third condition of paragraph 4(a) of the Policy has been fulfilled.

## 7. Reverse Domain Name Hijacking

Under paragraph 15(e) of the Rules:

"If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding."

In *Jazeera Space Channel TV Station v. AJ Publishing aka Aljazeera Publishing*, WIPO Case No. [D2005-0309](#), the majority of the three-member panel noted that the onus of proving that a complainant has acted in bad faith is on the respondent, and that mere lack of success of the complaint is not of itself sufficient to constitute reverse domain name hijacking. The majority went on to note that:

"Allegations of reverse domain name hijacking have been upheld in circumstances where a respondent's use of a domain name could not, under any fair interpretation of the facts, have constituted bad faith, and where a reasonable investigation would have revealed the weaknesses in any potential complaint under the Policy (see *Goldline International, Inc v. Gold Line*, WIPO Case No. [D2000-1151](#)). See also *Deutsche Welle v. DiamondWare Limited*, WIPO Case No. [D2000-1202](#), where an allegation of reverse domain name hijacking was upheld in circumstances where the complainant knew that the respondent used the at-issue domain name as part of a *bona fide* business, and where the registration date of the at-issue domain name preceded the dates of the complainant's relevant trademark registrations."

The three-member panel in *Yell Limited v. Ultimate Search*, WIPO Case No. [D2005-0091](#) noted that whether a complainant should have appreciated at the outset that its complaint could not succeed will often be an important consideration.

In the view of the Panel this is a complaint which should never have been launched. The Complainant is professionally represented in this matter and, in the opinion of the Panel should have appreciated that establishing registration and use in bad faith in respect of a domain name which had first been registered nearly thirty years ago – without any evidence of a subsequent acquisition – and which was a three-letter acronym was likely to involve difficult considerations. In particular it would manifestly require the Complainant to be able to establish it had a significant reputation outside its field of activity in the US at the relevant date and it has not provided any evidence to establish that was even arguably the case. The Complainant appears to have ignored the difficulties in its case. The fact was that a three-letter domain name could have been registered by many people for many reasons, none of which had anything to do with the Complainant. Reasonable enquiries would have quickly established this was likely the case. Given the nature of the Policy and the multiplicity of previously decided cases dealing with similar issues in relation to short acronym type domain names where there was a lack of targeting of the complainant's mark, this was a case that had no reasonable prospects of success.

The Panel is also concerned by the evidence that the Complainant as long ago as 2001 considered seeking to purchase the Disputed Domain Name but appears to have decided not to pursue this when told by the broker it instructed that it would need to offer over USD 25,000. The Complainant seems to have misrepresented the nature of this correspondence - see above - although this may perhaps have been inadvertent. In any case this correspondence shows that over 20 years ago the Complainant was aware that it would need to purchase the Disputed Domain Name if it wished to acquire it.

It also appears that the Complainant carried out some research which led to it being aware that the Respondent may have used the term “international business automation” in relation to his business. The Complainant has not however disclosed what that research was or what exactly it showed. Any such usage by the Respondent would of course likely cast doubt on the prospects of the Complaint succeeding. The Panel considers the Complainant's failure to fully disclose exactly what its research comprised and what it had learnt as a result is a material omission.

The above findings are sufficient in the opinion of the Panel to justify the censure of a finding of RDNH. The Panel does not therefore need to address all of the other grounds the Respondent relies upon in relation to this issue.

## **8. Decision**

For the foregoing reasons, the Complaint is denied. The Panel finds that the Complainant was brought in bad faith and constitutes an abuse of the administrative proceeding.

*/Nick J. Gardner/*

**Nick J. Gardner**

Panelist

Date: October 17, 2023