

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation v. Ki Lisheng, Ki Lisheng  
Case No. D2023-4386

### **1. The Parties**

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

The Respondent is Ki Lisheng, Ki Lisheng, Canada

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

The disputed domain name <ibm.media> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2023. On October 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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, REDACTED FOR PRIVACY, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 26, 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 November 1, 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 November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 23, 2023.

The Center appointed Alissia Shchichka as the sole panelist in this matter on November 24, 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 multinational manufacturer of computer and computer-related goods and services throughout the world and produces a wide variety of products that process, communicate, store, and retrieve information.

The 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:

- United States Patent and Trademark Office (USPTO) registration No. 1,243,930, registered on June 28, 1983, for the word mark IBM, in class 42;
- United States Patent and Trademark Office (USPTO) registration No. 4,181,289, registered on July 31, 2012, for the figurative mark IBM, in classes 9, 16, 18, 20, 21, 22, 24, 25, 28, 35, and 41;
- United States Patent and Trademark Office (USPTO) registration No. 1,694,814, registered on June 16, 1992, for the word mark IBM, in class 36;

The Respondent, according to the disclosed Whols information for the disputed domain name, is a resident of Canada who registered the disputed domain name on May 6, 2016.

By the time of rendering this decision, the disputed domain name redirects to the Complainant's official website (namely, <https://mediacenter.ibm.com>).

#### **5. Parties' Contentions**

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

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

Notably, the Complainant traces its roots back to the 1880s and asserts itself as a leading pioneer in producing a diverse range of information-related products, including computers and accessories. With a reputation built over a century for high-quality goods and services, IBM is now recognized and widely acknowledged as a world-famous and well-known trademark.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark IBM as it incorporates the entire trademark. The generic suffix ".media" is not sufficient to prevent confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name since (1) the Complainant has never licensed, contracted, or otherwise permitted the Respondent to apply to register the disputed domain name, (2) the Respondent has been misusing the disputed domain name in various ways, including redirecting users to a Complainant-owned website and configuring an email server; (3) the Respondent is not commonly known by the disputed domain name, and has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further contends that the trademark IBM is well known and the Respondent knew about the Complainant's trademark, which evidences bad faith registration. Furthermore, the Complainant submits that the disputed domain name redirected visitors to the Complainant's official website and that this use cannot be considered a *bona fide* offering of goods or services.

Also, on July 27, 2023, and on August 10, 2023, the Complainant sent cease-and-desist notices to the Respondent, to which the latter did not reply.

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

## **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 carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the 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 the 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 the Complainant's 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 the 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 the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the IBM trademarks or to seek registration of any domain name incorporating the trademarks. The Respondent is also not known to be associated with the IBM trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name.

In addition, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The disputed domain name redirects users to the Complainant’s official website. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on the Respondent any rights or legitimate interests in the domain name.

Finally, the nature of the disputed domain name is inherently misleading to Internet users, as it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1

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

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 notes that the Complainant’s well-known IBM trademarks substantially predates the Respondent’s registration of the disputed domain name. Therefore, the Respondent knew or should have known of the Complainant’s trademarks at the time of registering the disputed domain name (see [WIPO Overview 3.0](#), section 3.2.2).

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant’s widely known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

Moreover, the Respondent’s knowledge of the Complainant and its trademarks can be readily inferred from the Respondent’s use of the disputed domain name, which redirects users to the Complainant’s official website.

Panels have consistently ruled that under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

Therefore, in the Panel's view, 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 the Complainant's IBM trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Moreover, panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds that the Complainant has established the third 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 <ibm.media> be transferred to the Complainant.

*/Alissia Shchichka/*

**Alissia Shchichka**

Sole Panelist

Date: December 6, 2023