

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Milen Radumilo
Case No. D2023-5048

1. The Parties

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

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <ibm-spss.com> is registered with Name Connection Area LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 4, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 December 6, 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 December 6, 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 December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 2, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on January 5, 2024. 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

Since the 1880s, the Complainant is and has been a leading innovator in the design and manufacture of many technology products, including computers and computer hardware, software, and accessories. The Complainant is currently one of the premier manufacturers of computers and computer-related goods and services throughout the world, and the Complainant's name and the IBM trademark are famous.

The Complainant holds trademark registrations for IBM and SPSS worldwide, such as United States Registration No. 4,181,289, registered on July 31, 2012, in International Classes 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35 and 41 for the IBM design mark and European Union trademark registration No. 000831115 in international classes 9, 16, 42 for the SPSS word mark.

The disputed domain name was registered on August 13, 2023, and at the time of filing the Complaint, it resolved to a website that created a cybersecurity threat to users' computer systems through the distribution of malware and botnets. At the time of this decision, the disputed domain name is being used for a website that contains so called Pay-Per-Click ("PPC") links to third party websites containing references to products and services offered by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its widely known trademarks; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

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 the trademarks IBM and SPSS for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.2.1.

The Panel further finds that these marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to these marks mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds that 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.

Having reviewed the 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.

The Panel considers that the record of this case reflects that: the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4. Rather, the Respondent has composed the disputed domain name of the Complainant’s well-known trademarks and has used the disputed domain name in various ways none of which demonstrates the Respondent has any rights or legitimate interests in the disputed domain name. At the time of this decision, the disputed domain name is used to host a PPC landing page, with links to websites containing references to products and services offered by the Complainant, wherein the Respondent presumably earns click-through revenue from the unsuspecting Internet users misled to the disputed domain name by virtue of the implied affiliation with the Complainant. This use cannot confer rights or legitimate interests in favor of the Respondent. [WIPO Overview, 3.0](#), section 2.9.

Moreover, the Respondent’s prior use of the disputed domain name for the potential distribution of malware and botnets is evidently not considered a *bona fide* offering of goods and services and rather also prevents a finding of rights and legitimate interests of the Respondent. [WIPO Overview 3.0](#), section 2.13.

Based on the available record, the Panel finds that 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.

Considering the nature of the disputed domain name and the notoriety of the Complainant’s marks, the Panel finds that the Respondent was, more likely than not, aware of the Complainant’s trademarks at the time of the registration of the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Moreover, considering that the disputed domain name has been used for the potential distribution of malware and/ or to redirect to a website containing PPC links to third party's websites, is that the Panel finds that the use of the disputed domain name is also in bad faith.

Overall, the Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites 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 Respondent's website or location or of a product or service on the Respondent's website or location. 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 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-spss.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: January 26, 2024