

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation (IBM) v. Arnab K, IBM India
Case No. D2023-5412

1. The Parties

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

The Respondent is Arnab K, IBM India, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain names <talent-ibm.com> and <talents-ibm.com> are registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 3, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2024, 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 January 16, 2024.

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 January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 16, 2024.

The Center appointed Andrew F. Christie as the sole panelist in this matter on February 21, 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

The Complainant, which traces its roots to the 1880s, is 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. In 2023, the Complainant's trademark IBM was ranked 17th most valuable global brand by BrandZ with a value of more than USD 87 billion.

The Complainant owns trademark registrations for the word trademark IBM in 131 countries all around the world, for a broad range of goods and services, including US Trademark Registration No. 640606 (registered on January 29, 1957).

The disputed domain name <talents-ibm.com> was registered on July 26, 2023. The disputed domain name <talent-ibm.com> was registered on August 15, 2023.

The Complainant has provided undated screenshots showing that both of the disputed domain names resolved to a webpage that contained text stating, among other things, "Define your career with IBM", in a manner which essentially mimics the appearance of the equivalent part of the Complainant's website at "www.ibm.com". As of the date of this decision, neither of the disputed domain names resolve to an active webpage.

The Complainant has also provided evidence showing that emails were sent from email addresses containing the disputed domain names, in which recipients were purportedly offered employment by the Complainant and were requested to supply sensitive information and payment.

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 names.

The Complainant contends that the disputed domain names are confusingly similar to the Complainant's trademark on the following grounds. The letters "ibm" contained in the disputed domain names are exactly the same as the Complainant's IBM trademark. The only differences between the disputed domain names are the addition of "talent" or "talents", the dash, and the generic Top-Level Domain ".com." The inclusion of "talent" and "talents" is the Respondent's attempt to use the disputed domain names to resemble the Complainant's career and talent services. These minor variations do not obviate the confusing similarity between the disputed domain names and the IBM trademark.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain names on the following grounds. The Complainant has never licensed, contracted, or otherwise permitted anyone to apply to register the disputed domain names. There is no evidence that the Respondent is using the disputed domain names incorporating the IBM trademark for a bona fide offering of goods or services. The Respondent has been using the disputed domain names to perform a phishing scam against the Complainant and the Complainant's future employees and clients, and has derived illegitimate commercial gains as a result – in particular, the Respondent has been pretending to be a representative of the Complainant using the fake email addresses "[...]@talent-ibm.com" and "[...]@talents-ibm.com" to recruit people and provide employment offers in exchange for payment.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith on the following grounds. The Respondent was well aware of the Complainant's trademark at the time the Respondent registered the disputed domain names on July 26, 2023, and August 15, 2023. The Complainant's trademark is well known around the world. The registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be sufficient evidence of opportunistic bad faith. The Respondent has been actively using the disputed domain names to advance its cybercriminal activities – specifically attempting to create a likelihood of confusion by using the disputed domain names as part of a phishing scam to communicate with potential employees of the Complainant and purport to provide an employment offer in exchange for payment.

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.

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 entirety of the Complainant's word trademark IBM is reproduced within the disputed domain names. Although the addition of other terms (here, "talent-" and "talents-") 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 names and the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

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 names. 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 names such as those enumerated in the Policy or otherwise. While the Respondent's Organization was disclosed as allegedly "IBM India", the Panel

views this as a fraudulent attempt to legitimize the registration of the disputed domain names and further underscores the Respondent's intent to impersonate the Complainant.

Panels have held that the use of a domain name for illegal activity (here, phishing) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent registered the disputed domain names many decades after the Complainant registered its trademark, and that the disputed domain names incorporate the Complainant's trademark in its entirety and merely add terms ("talent-" or "talents-") that allude to corporate human resource activities. As mentioned above, the Respondent also sought to impersonate or associate itself with the Complainant via its registration details, by using the fraudulent Respondent Organization, "IBM India". It is clear the Respondent registered the disputed domain names with knowledge of the Complainant's trademark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, phishing) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names, <talent-ibm.com> and <talents-ibm.com>, be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: March 6, 2024