

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. chenxu, chenxu
Case No. D2024-0039

1. The Parties

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

The Respondent is chenxu, chenxu, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <ibm-usdt.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2024. On January 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2024, 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 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 17, 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 12, 2024.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on February 15, 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

According to the Complaint, tracing its roots to the 1880s, the Complainant is and has been 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 was ranked 17th most valuable global brand.

Incorporated on June 16, 1911, as an amalgamation of three previously existing companies, the Complainant officially became International Business Machines on February 14, 1924. The Complainant has been offering products under the trademark IBM ever since.

The Complainant introduced its first large vacuum tube computer under the name IBM 710 in 1952, and since then has continuously used the trademark IBM in association with computers and computer hardware, software and accessories.

The Complainant owns and has owned trademark registrations for IBM in 131 countries all around the world for several decades, and for a broad range of goods and services, including, although not limited to, information technology related goods and services.

More particularly, the Complainant owns the following trademarks in the United States:

- United States trademark registration no. 4,181,289 registered on July 31, 2012, in International classes 9, 16, 18, 20, 21, 22, 25, 28, 35 and 41,
- United States trademark registration no. 3,002,164 registered on September 27, 2005, in International class 9,
- United States trademark registration no. 1,696,454 registered on June 23, 1992, in International class 36.

The disputed domain name was registered on October 7, 2023.

At the time of filing of the Complaint, the disputed domain name resolved to an active website as log-in webpage (displaying the IBM trademark), requesting usernames and passwords, or the creation of an account with an email, phone number and invitation code. Further, users on social media were found to be promoting the disputed domain name in relation to cryptocurrency cloud mining and investment.

The Complainant sent a cease-and-desist letter to the Respondent through the Registrar at the email address listed on the Whois records on October 27, 2023, asking the Respondent to disable and transfer the disputed domain name back to IBM.

The Complainant also sent a follow up letter to the Respondent on November 13, 2023.

The Respondent continued to use the disputed domain name as described above even after receiving cease-and-desist letters from the Complainant regarding the use of the Complainant's mark.

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 contends that:

- As a result of the high quality of goods and services the Complainant has provided to its customers for over 100 years, and its reputation as one of the premier manufacturers of computer and computer related goods and services throughout the world, the Complainant's name and the IBM trademark are famous and valuable assets.
- the disputed domain name is identical or confusingly similar to the Complainant's registered trademarks, which incorporates the said trademark with minor variations. The disputed domain name consists of the letters "ibm" (not case sensitive), followed by the hyphen "-", the letters "usdt" (not case sensitive), and the generic Top-Level Domain ".com." The letters "ibm" contained in the disputed domain name are exactly the same as the IBM trademark. The only difference is the addition of the hyphen "-" and the letters "usdt," which, considering the nature of use of the disputed domain name could reasonably be understood as the ticket symbol for the cryptocurrency Tether coin.
- the addition of "usdt" as a descriptive symbol of cryptocurrency which further adds to the confusion as to the relationship between the Complainant and Respondent rather than reducing any confusion.
- the Complainant has never licensed, contracted, or otherwise permitted anyone to apply to register the disputed domain name. Additionally, there is no evidence that "ibm" or "ibm usdt" is the name of the Respondent's corporate entity, nor is there any evidence of fair use.
- there is no evidence that the Respondent is using the disputed domain name incorporating the IBM trademark for a bona fide offering of goods or services. On the contrary, the Respondent has been actively using the IBM trademark in the domain name to derive illegitimate commercial gains. Specifically, the Respondent has been intentionally attempting to create a likelihood of confusion by using the disputed domain name containing the IBM trademark to generate revenue through promoting cryptocurrency cloud mining and investment.
- such unauthorized use of the IBM trademark is likely to trick consumers into erroneously believing that the Complainant is somehow affiliated with the Respondent or endorsing its commercial activities, while in fact, no such relationship exists.
- there is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with any bona fide offering of goods or services.
- the Respondent has not been commonly known by the disputed domain name.
- USDT is used in relation to "US Dollar Transactions" for most cryptocurrency or market exchange denominations; therefore, it demonstrates that IBM is being used in relation to USDT and cryptocurrency mining to profit off of IBM's goodwill, evidencing bad faith, as "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 was well aware of the Complainant's trademark at the time the Respondent registered the disputed domain name on October 7, 2023.

- the Complainant's trademarks are well-known around the world. The Complainant relies on the extensive range of registered trademarks for IBM to which references have already been made. This is proof of bad faith at the time of registration. In this case, the Respondent registered the disputed domain name at least 63 years after the Complainant established registered trademark rights in the IBM mark.
- one could reasonably conclude that the disputed domain name is related to and meant to replace the domain name <ibmusdt.com>, which was the disputed domain name subject to complaint in *International Business Machines Corporation v. noon noon*, WIPO Case No. [D2022-4199](#).
- notably, both the disputed domain name at issue in this Complaint and the domain name subject to a prior proceeding <ibmusdt.com> both display login pages.
- the disputed domain name was registered after the Panel's decision on January 18, 2023, and after <ibmusdt.com> was disabled and transferred to the Complainant.
- the Respondent has registered the disputed domain name through a privacy shield service.
- Internet search engines find the Complainant and its products/services when using "ibm" as a search term. As such, the Respondent either knew or should have known of the Complainant's IBM mark when registering the disputed domain name or has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith."
- the Respondent's misuse of the disputed domain name is clear evidence of bad faith, because generating more traffic will result in more money for the Respondent. It also creates a likelihood of confusion as to the relationship between the Complainant and Respondent, as well as the source, sponsorship, or endorsement of the Respondent's websites and/or goods and services.

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 disputed domain name is confusingly similar to the Complainant's IBM trademark, as it incorporates the said trademark in its entirety, with the addition of the hyphen and the letters "usdt". [WIPO Overview 3.0](#), section 1.7.

Considering that the entirety of the mark is reproduced within the disputed domain name, the addition of the hyphen and the term "usdt" do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, as per [WIPO Overview 3.0](#), section 1.8.

Accordingly, 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, as per [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 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.

There is no evidence that “ibm” or “ibm usdt” is the name of the Respondent’s corporate entity, nor is there any evidence of fair use. Furthermore, there is no evidence that the Respondent is using the disputed domain name incorporating the IBM trademark for a bona fide offering of goods or services. On the contrary, the Respondent has been actively using the disputed domain name to resolve to an apparent phishing log-in webpage (displaying the IBM trademark), seeking login credentials and personal information. Moreover, the Complainant has provided evidence that the disputed domain name has been used in association with a cryptocurrency scheme, promoted through social media channels. Panels have held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Moreover, such unauthorized use of the IBM trademark is likely to trick Internet users into erroneously believing that the Complainant is somehow affiliated with the Respondent or endorsing its commercial activities, while in fact, no such relationship exists.

Consequently, 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.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that a presumption of bad faith may be created solely through the registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity.

In the present case, the Panel notes that:

- the Respondent has registered the disputed domain name that is confusingly similar to the Complainant’s famous trademark while having no relationship to the Complainant or the IBM mark. Therefore, the Respondent has registered the disputed domain name in bad faith,
- the Respondent was well aware of the Complainant’s trademark at the time the Respondent registered the disputed domain name, as the Complainant’s trademarks are well-known around the world,

- the Respondent registered the disputed domain name at least 63 years after the Complainant established registered trademark rights in the IBM mark,
- the disputed domain name lures unsuspecting Internet users and directs them to a log-in webpage, requesting usernames and passwords or the creation of an account with an email, phone number and invitation code, thus the Respondent is trading on the goodwill of Complainant's trademarks to attract Internet users, presumably for the Respondent's own commercial gain,
- users from several social media platforms were found to be promoting the disputed domain name in relation to the cryptocurrency platform to profit off of IBM's goodwill,

and finds all these actions of the Respondent in respect of the disputed domain name provide evidence of bad faith registration and use. Furthermore, as noted above, use of a domain name for per se illegitimate activity can never confer rights or legitimate interests on a respondent, and such behavior is manifestly considered evidence of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Accordingly, 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-usdt.com> be transferred to the Complainant.

/Dr. Beatrice Onica Jarka/

Dr. Beatrice Onica Jarka

Sole Panelist

Date: February 29, 2024