

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation (IBM) v. Metodi Darzev, Tool Domains

Case No. D2024-0116

### **1. The Parties**

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

The Respondent is Metodi Darzev, Tool Domains, Bulgaria.

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

The disputed domain name <ibm-ml-hub.com> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2024. On January 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 2024, the Registrar transmitted by email to the Center its verification response registrant and contact information for the disputed domain name which differed from the named Respondent (unknown, John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 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 31, 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 February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on February 29, 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**

It results from the Complainant's undisputed allegations that it 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. 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 is the registered owner of several trademarks worldwide for IBM, such as, United States trademark registration no. 4,181,289 registered on July 31, 2012, in classes 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35, 35 and 41.

The disputed domain name <ibm-ml-hub.com> was registered on July 22, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click ("PPC") links in the Complainant's area of activity. In addition, the undisputed evidence provided by the Complainant proves that the disputed domain name is offered for sale for USD2,400.

#### **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 the disputed domain name is identical or confusingly similar to the Complainant's trademark since it contains its trademark IBM entirely. The only difference is the addition of the hyphens "-", the letters "ml," and the word "hub." The letters "ml" are recognized as an abbreviation for "machine learning" which is an integral part of products and services the Complainant offers.

The Complainant further contends that its trademark IBM is distinctive and well-known worldwide.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has never licensed, contracted, or otherwise permitted anyone to apply to register the disputed domain name. Additionally, there is no evidence that "IBM" 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 disputed domain name incorporating the IBM trademark for a bona fide offering of goods or services. It had been actively using the IBM trademark in the disputed domain name to derive illegitimate commercial gains.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent was well aware of the Complainant's trademarks at the time it registered the disputed domain name, since the Complainant's trademarks are well-known around the world. The Respondent has also been actively using the IBM trademark in the disputed domain name to derive illegitimate commercial gains. Specifically, the Respondent has been intentionally attempting to create a likelihood of confusion by pointing the disputed domain name to a PPC parking page with advertisement links containing cloud computing and other technology-related services and software and has

later used the disputed domain name to redirect Internet users to a website that showed elements consistent with malware or virus distribution.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

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

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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

Although the addition of other terms (here, the use of hyphens, the terms “ml” and “hub”) 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 name and the mark 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 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.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name has resolved to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (, a parking page displaying PPC links in the Complainant's area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view.

The Panel further notes that the disputed domain was also used to redirect Internet users to a website that showed elements consistent with malware or virus distribution. Previous panels have held that the use of a domain name for illegal activity, such as distributing malware, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Therefore, such use can neither be considered as bona fide offering of goods or services nor 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.

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 shares the view of other UDRP panels and finds that the Complainant's trademark IBM is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant's trademark when registering the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant's trademark followed by the descriptive terms "ml" and "hub" (and hyphens). Panels have consistently found that the mere 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 can by itself create a presumption of bad faith, [WIPO Overview 3.0](#) section 3.1.4. The Panel shares this view.

Furthermore, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a parking page displaying PPC links in the Complainant's area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

In addition, the Respondent's further use of the disputed domain name to redirect Internet users to a website that showed elements consistent with malware or virus distribution also contribute to a finding of use in bad faith.

Finally, the Panel notes that the evidence indicates that the Respondent may have actually registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third persons, in particular to one of the Complainant's competitors, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. According to the Complainant's uncontested allegations, the Respondent has offered the disputed domain name for sale for USD2,400. This Panel finds that this sum is in excess of any out-of-pocket costs directly related to the disputed domain name (see *Tosara Pharma Limited v. Super Privacy Service LTD c/o Dynadot / zuhal topuz*, WIPO Case No. [D2021-4062](#)).

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-ml-hub.com> be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: March 14, 2024