

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Horace Pappillion,
Pappillion Logistics LLC
Case No. D2024-1354

1. The Parties

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

The Respondent is Horace Pappillion, Pappillion Logistics LLC, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 2, 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 April 3, 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 April 3, 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 April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 30, 2024.

The Center appointed Angela Fox as the sole panelist in this matter on May 7, 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 is the internationally famous, United States-based computer company, IBM. It was incorporated in 1911 and has been doing business and offering products under the trademark IBM since 1924. Initially these included office and research equipment, but over the decades it has expanded to typewriters, computers, and computer-related goods. The IBM trademark is internationally famous, as found by numerous prior UDRP decisions. The Complainant spends over USD 1 billion annually in marketing its IBM-branded goods and services globally.

The Complainant owns numerous trademark registrations for IBM in plain and stylized form, including the following, details of which were annexed to the Complaint:

- United States trademark registration No. 1,243,930 for IBM in Class 42, registered on June 28, 1983;
- United States trademark registration No. 1,058,803 for IBM in Classes 1, 9, 16, 37, 41, and 42, registered on February 15, 1977; and
- United States trademark registration No. 640,606 for IBM in Class 9, registered on January 29, 1957.

In 2023, the Complainant's IBM mark was ranked the 17th most valuable global brand by BrandZ. In 2022, it was ranked the 18th most valuable global brand by the same survey and was similarly ranked by Interbrand. The Complainant was then the 49th largest company on the Fortune U.S. 500 list, and the 168th largest company on the Fortune Global 500 list. The Complainant's IBM trademark was valued by BrandZ as worth over USD 87 billion in 2023, USD 96 billion in 2022, USD 91 billion in 2021, and USD 83 billion in 2020. Annexed to the Complaint were copies of printouts from websites relating to these and other similar recognitions.

The disputed domain name was registered on September 1, 2023. It is in use for a pay-per-click parking page with advertisement links referencing technology-related products such as computers. The Complainant states that the pay-per-click page points visitors to a website that creates a cybersecurity threat to users' computer systems through the distribution of malware. Additionally, the Complainant states that IP addresses linked to the disputed domain name are linked to anonymization services which hide the identity of a sender or mask the origination of the computer system, commonly referred to as IP spoofing. Moreover, the Complainant adds, IP addresses associated with the disputed domain name are linked to botnet command and control servers and attaches a threat intelligence report concerning those IP addresses.

The Complainant sent a cease and desist demand to the Respondent via the Registrar by email on November 29, 2023, asking that it cease use of the disputed domain name and transfer it to the Complainant. No reply was received, and the Complainant sent a reminder on December 13, 2023. No reply to the reminder was received, either.

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 confusingly similar to its IBM trademark because it recognizably incorporates the whole of the IBM trademark and only adds the country identifier, "pk", which denotes Pakistan. The Complainant further submits that the Respondent has no rights

or interests in the disputed domain name, which it has been using for unlawful purposes, including the distribution of malware. Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant submits that the Respondent was aware of and targeting the Complainant and its IBM trademark when the disputed domain name was registered, given the international fame of the IBM trademark, or alternatively exhibited willful blindness to the Complainant's well-known rights. Moreover, the Complainant submits that since at least as early as September 5, 2023, the Respondent has been actively using the disputed domain name to derive illegitimate commercial gains by using it to intentionally create a likelihood of confusion by pointing the disputed domain name to a pay-per-click parking page with advertisement links referencing IBM, other technology brands that haven't been known to offer competing products, such as Dell and Lenovo, and products such as servers and laptops. The Complainant also points to the Respondent's use of a privacy service and the use of the disputed domain name to distribute malware as evidence that the disputed domain name was registered and has been used in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

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.

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.

Panels have held that the use of a domain name for illegal activity such as the distribution of malware can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In this case, the Complainant has provided evidence to support its assertion that the IP addresses associated with the disputed domain name have been linked to the distribution of malware, and the Respondent has not attempted to rebut this. The Panel therefore concludes that the Respondent has used the disputed domain name in connection with illegitimate ends, and that such activities cannot form the basis of any rights or legitimate interests on the part of the Respondent in the disputed domain name.

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 IBM trademark is internationally famous, including in the United States, where the Respondent is based, and numerous prior panels have confirmed the fame of the IBM mark (see for example *International Business Machines Corporation v. Sadaqat Khan*, WIPO Case No. [D2018-2476](#), and *International Business Machines Corporation v. Lingji Xiang*, WIPO Case No. [D2021-3944](#)). Against this backdrop, and the use of the disputed domain name in connection with a pay-per-click page at which computer-related links were displayed, it is implausible that the Respondent was not aware of and targeting the Complainant when it registered the disputed domain name. Further, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant.

In addition, the Complainant has submitted IP intelligence reports showing that the IP addresses associated with the disputed domain name have been linked to malicious activities including the distribution of malware, botnets, which are used to carry out coordinated cyberattacks, and anonymization services (“IP spoofing”). The Respondent has not sought to rebut this evidence. Panels have held that the use of a domain name for illegal activity such as the distribution of malware constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent registered and has used the disputed domain name in 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 name <pk-ibm.com> be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: June 10, 2024