

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. ceo german
Case No. D2024-1696

1. The Parties

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

The Respondent is ceo german, India.

2. The Domain Name and Registrar

The disputed domain name <ibmcarees.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 April 22, 2024. On April 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 24, 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 26, 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 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2024. The Respondent sent informal email communications to the Center on April 29, 2024, and June 11, 2024. The proceeding was suspended on May 10, 2024, and later reinstated on June 10, 2024. The Center notified the commencement of panel appointment process on June 20, 2024.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on June 26, 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, International Business Machines Corporation is a globally recognized technology and consulting company, established on June 16, 1911. The Complainant provides a wide range of IT services, software, and hardware products. The Complainant is headquartered in Armonk, New York, and operates in over 170 countries worldwide. The Complainant is known for its contributions to technology and innovation, holding numerous patents and trademarks globally.

The Complainant holds several trademark registrations for the mark “IBM” in various jurisdictions, including the following:

- United States trademark IBM Reg. No: 4181289 registered on July 31, 2012, in classes 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35, and 41.
- United States trademark IBM Reg. No: 3002164 registered on September 27, 2005, in classes 9.
- United States trademark IBM Reg. No: 1696454 registered on June 23, 1992, in class 36.

The Complainant is also the owner of the domain names that include its trademark, such as <ibm.com>, <ibmcloud.com>, and <ibmresearch.com>. These domain names are used to promote its products and services and provide information to its global customer base.

The disputed domain name was registered on October 25, 2023. The disputed domain name currently redirects to a pay-per-click (PPC) website, which displays ads and links resolving to third parties, some of which are related to employment and finance.

Furthermore, MX records have been configured for the disputed domain name.

On November 26, 2023, the Complainant sent a cease-and-desist letter to the Respondent, but received no reply.

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.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's well-known IBM trademark. The disputed domain name incorporates the IBM trademark in its entirety, with a minor typographical error in the word “careers”. This misspelling does not distinguish the disputed domain name from the Complainant's trademark and is likely to confuse consumers looking for IBM's official career-related website.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized or licensed the Respondent to use the IBM trademark. Furthermore, the

Respondent is not commonly known by the disputed domain name and has not made any bona fide offering of goods or services under it. The use of the disputed domain name for a PPC website indicates an attempt to capitalize on the Complainant's established trademark for commercial gain, which does not constitute a legitimate interest.

Lastly, the Complainant claims that the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

On April 29, 2024, the Respondent wrote "PLEASE IGNORE I CAN REMOVED MY ACCOUNT EXTREMELY SORRY OR THAT". On June 11, 2024, the Respondent further wrote "pls ignore my sincer apologies, we regret".

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

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 mark is reproduced 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, "carees" (a typographical error for "careers"), may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 Complainant's trademark IBM is widely recognized and has been registered in numerous jurisdictions.

The addition of the term "carees" does not sufficiently distinguish the disputed domain name from the Complainant's trademark. Therefore, the disputed domain name <ibmcarees.com> is confusingly similar to the Complainant's trademark IBM.

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.

The Complainant has stated that the Respondent is not commonly known by the disputed domain name and has not used the disputed domain name in connection with a bona fide offering of goods or services. Instead, the Respondent has used the disputed domain name to display PPC advertisements resolving to third party websites, which does not constitute a legitimate noncommercial or fair use as the links compete with and capitalize on the reputation and goodwill of the Complainant’s trademark. [WIPO Overview 3.0](#), section 2.9. Furthermore, the Complainant has not authorized the Respondent to use its trademark, nor does the Respondent have any other legal rights or legitimate interests in the name “IBM” or in the disputed domain name.

Additionally, the Panel finds that the composition of the disputed domain name, incorporating the Complainant’s trademark and a typographical variation of the word “careers” likely intended to mislead consumers looking for the Complainant’s career opportunities.

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 and used the disputed domain name in bad faith. The Complainant has provided sufficient evidence to demonstrate that the Respondent registered the disputed domain name primarily to disrupt the business of the Complainant and to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

The evidence shows that the Respondent has no legitimate interest in the disputed domain name and is instead using it to generate PPC revenue from advertisements that capitalize on the Complainant’s well-known mark, IBM.

The Respondent has engaged in a conduct that constitutes bad faith registration and use of the disputed domain name. The Respondent's use of the disputed domain name to host PPC advertisements demonstrates an attempt to profit from the reputation of the Complainant's mark by creating confusion among Internet users. WIPO Overview, section 3.1.4.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. This is evident from the use of the domain name to display advertisements that are likely to mislead users into believing they are accessing a legitimate careers website of the Complainant. In light of the Respondent's configuration of MX records for the disputed domain name, there is also a risk that the Respondent could send fraudulent emails passing itself off as the Complainant in the future.

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.

The Complainant has established that the Respondent's registration and use of the disputed domain name falls under these bad faith circumstances. Given the distinctiveness and fame of the IBM trademark, the Respondent's actions are clearly intended to exploit this reputation for financial gain.

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 <ibmcarees.com> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: July 10, 2024