

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation v. Schulz Tess  
Case No. D2024-1843

### **1. The Parties**

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

The Respondent is Schulz Tess, United States.

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

The disputed domain name <ibm-aso.com> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 1, 2024. On May 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3 and 7, 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 May 7, 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 amended Complaint in English on May 13, 2024.

On May 7, 2024, the Center informed the Parties in Russian and English, that the language of the Registration Agreement for the disputed domain name is Russian. On May 13, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amended 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 in English and Russian of the Complaint, and the proceedings commenced on May 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 12, 2024.

The Center appointed Clark W. Lackert as the sole panelist in this matter on June 27, 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 was incorporated in 1911 as an amalgamation of three previously existing companies, creating "International Business Machines" in 1924. The Complainant has been offering products under the trademark IBM ("the Complainant's Mark") ever since. In the early days, these products included office and research equipment such as punch machines, calculating machines, clocks and scales, key punches and duplicating punches. The Complainant introduced its first large vacuum tube computer under the Complainant's Mark in 1952, and since then has continuously used the trademark in association with computers and computer hardware, software and accessories. In 1961, the Complainant introduced the IBM Selectric typewriter which was a significant innovation in the business sector. 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. Today, the Complainant's annual sales exceed USD 60 billion, with annual research costs of USD 6 billion and annual marketing costs of USD 1 billion.

The Complainant owns trademark registrations on its IBM trademark in 131 jurisdictions, and the following table indicates a sample of such registrations in the United States:

Jurisdiction	Registration Number	Registration Date
United States	640606	January 29, 1957
United States	1696454	June 23, 1992
United States	3002164	September 27, 2005
United States	1243930	June 28, 1983
United States	1694814	June 16, 1992

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 corporate name and its IBM trademark are famous and valuable assets. The Complainant's Mark has been found to be a world-famous trademark. See, e.g., *International Business Machines Corporation v. Lingji Xiang*, WIPO Case No. [D2021-3944](#). Furthermore, in another UDRP decision, the Panel noted the following regarding the Complainant's Mark: "The Panel is of the opinion that the Complainant's trademark has a strong reputation and is widely known throughout the world... This makes it difficult to conceive any plausible legitimate use of the disputed domain name." *International Business Machines Corporation v. Sadaqat Khan*, WIPO Case No. [D2018-2476](#). Moreover, the Complainant's Mark was valued by BrandZ as worth over USD 87 million in 2023, USD 96 million in 2022, and USD 91 million in 2021.

The Respondent registered the disputed domain name on December 16, 2023. It resolves to a webpage with a login form prominently displaying the Complainant's Mark and requiring a username and password to access. The Complainant has provided evidence showing that a user was referred to the website at the disputed domain name on WhatsApp in connection with a fraudulent advertisement of a commission-based employment with the Complainant.

## 5. Parties' Contentions

### A. Complainant

Within the meaning of paragraph 4 of the Policy, the disputed domain name is identical or confusingly similar to the Complainant's Mark. The disputed domain name consists of the letters "ibm", followed by a dash "-", the letters "aso" (the letters "aso" can reasonably be understood as a reference to the commonly used acronym "administrative services only"), and the generic Top-Level Domain ("gTLD") ".com." The phrase "administrative services only" is often connected to employee-employer relations and based on the content and use of the disputed domain name, and the usage of "aso" in the disputed domain name is to further perpetuate an employment scam as an unsuspecting user can reasonably understand the disputed domain name to relate to ASO services offered by the Complainant.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." See, for example, *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#) (transferring the domain name <ge-recruiting.com>); *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. [D2000-1614](#) (transferring the domain name <ikeausa.com>); *Microsoft Corporation v. Step-Web*, WIPO Case No. [D2000-1500](#) (transferring the domain name <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. [D2000-1065](#) (transferring the domain name <cbsone.com>).

The Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii); Rules, paragraph 3(b)(ix)(2)). The Complainant has never licensed, contracted, or otherwise permitted anyone to apply to register the disputed domain name. Furthermore, there is no evidence that the Respondent is using the disputed domain name incorporating the Complainant's Mark for a bona fide offering of goods or services. On the contrary, the Respondent has been actively using the Complainant's Mark in the disputed domain name and displaying the Complainant's Mark on the disputed domain name's webpage to perpetrate an employment scam and deceive unsuspecting visitors into believing the disputed domain name is associated with the Complainant.

The disputed domain name was registered and is being used in bad faith. (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3)). 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 can by itself create a presumption of bad faith." See *International Business Machines Corporation v. Jian Liu*, WIPO Case No. [D2021-0248](#) (finding a presumption of bad faith where the respondent had registered the domain name <ibmdns.com>, which incorporated "Complainant's famous IBM Mark" followed by a descriptive term). Here, the disputed domain name comprises the world-famous IBM mark. The only difference between the disputed domain name and the Complainant's Mark is the addition of the dash "-" and the letters "aso", which can reasonably be understood to reference the phrase "administrative services only", a term used in relation to employee health benefits. Since the disputed domain name comprises the Complainant's Mark and a descriptive term used in conjunction with the Complainant's Mark (namely, "aso"), a presumption of bad faith against the Respondent must be found. The Respondent was aware of the Complainant's Mark at the time the Respondent registered the disputed domain name on December 16, 2023, since the Complainant's trademark rights were created long before 2023 and extend worldwide.

Moreover, the Respondent used the social messaging application, WhatsApp, to lure unsuspecting users to the disputed domain name, which directed those users to a fake IBM login portal, displaying the Complainant's famous IBM eight-bar logo, further contributing to the confusion that the Complainant is somehow affiliated with the Respondent or endorsing its commercial activities, while, in actuality no relationship exists. Additionally, by displaying a purported employee portal webpage, the disputed domain name also risks the security of the Complainant's employees who may visit the disputed domain name and

use their work login credentials, which compromises their personal privacy as well as the Complainant's cybersecurity interests, further providing evidence of bad faith. As the webpage for the disputed domain name provides an option to either enter one's username and password, or register with personal information, the disputed domain name furthers the security risk of unsuspecting Internet users and employees of the Complainant and evidences bad faith. The Respondent's misuse of the disputed domain name to further fraudulent and illegal employment scam is clear evidence of bad faith. In this recruitment scam, the Respondent is falsely appearing as a representative of the Complainant, which is represented as an "application marketing company" for "data providing users", which is further evidence of the Respondent offering a falsified employment opportunity on behalf of the Complainant. For all the foregoing reasons, the Respondent has registered and is using the disputed domain name in bad faith.

## **B. Respondent**

The Respondent is in default and did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Procedural Issue – Language of the Proceeding**

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant submitted its Complaint in English, and requests the proceeding to be held in English. The Center has sent all its relevant email communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not responded to this invitation and has thus not objected to the Complainant's request that the proceeding be held in English. Additionally, the disputed domain name incorporates the Complainant's trademark plus the term "aso", an acronym for the descriptive phrase "Administrative Services Only" in English. The Panel also notes that the Respondent is located in the United States, and the website at the disputed domain name contains some English terms.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs ([WIPO Overview 3.0](#), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2 Substantive Issues**

#### **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 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, with the addition of the dash “-” and the acronym “aso” possibly meaning “Administrative Services Only”. 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**

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 here, claimed phishing and impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the composition of the disputed domain name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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. Here, the disputed domain name has been used to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s Mark and thereby diverting web traffic in violation of paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.4. Moreover, the fraudulent and illegal impersonation of the Complainant by the Respondent in potentially offering IBM jobs is bad faith. Panels have held that the use of a domain name for illegal activity, such as phishing and impersonation/passing off shown in this case, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Here, not only has the Respondent used the Complainant’s famous trademark IBM to divert web traffic to itself, the Respondent has also actively attempted to pass itself off as the Complainant by means of the disputed domain name and the IBM logo on the website to possibly obtain confidential information from potential job applicants to the Complainant. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name 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 name <ibm-aso.com> be transferred to the Complainant.

*/Clark W. Lackert/*

**Clark W. Lackert**

Sole Panelist

Date: July 9, 2024