

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. User has not completed their account details with the Registrar
Case No. D2024-1957

1. The Parties

The Complainant is International Business Machines Corporation, United States of America, internally represented.

The Respondent is User who has not completed their account details with the Registrar.

2. The Domain Name and Registrar

The disputed domain name <instana-space.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2024. On May 10, 2024, the Center emailed the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar emailed the Center its verification response, disclosing only an email address for the disputed domain name but not the identity or other contact information for the registrant of the disputed domain name, which information was unavailable to the Registrar and had not been provided by the Respondent. The Center sent an email to the Complainant on May 27, 2024, providing the limited registrant contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not respond to this communication.

The Center verified that 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 June 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on July 3, 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 recognized as one of the world's leading technology and consulting organizations. Through its wholly owned subsidiaries, the Complainant maintains business operations in over 175 countries. The Complainant has a workforce of over 288,300 employees worldwide. For 2023, the Complainant reported a revenue of USD 61.9 billion and a net income of USD 7.5 billion. In addition to its investments in product development, the Complainant allocated over USD 6 billion to advanced research in both 2023 and 2022.

In November 2020, the Complainant announced its acquisition of the successful start-up Instana, Inc., founded in 2015. The acquisition included the INSTANA platform, a leading enterprise observability and application performance monitoring platform. Since the acquisition, the Complainant has continued to offer products and services under the INSTANA and INSTANA composed marks. The Complainant has been utilizing its portfolio of INSTANA trademarks consistently across a wide range of products and services, particularly those related to computer products and services thereby establishing common law trademark rights in the trademark INSTANA since at least 2020, as per the Complainant's own website at "www.ibm.com/products/instana"¹. The Annexes to the Complaint show that the INSTANA mark has become a distinctive identifier that consumers associate with the Complainant's observability and monitoring products and services. The Complainant also holds a plethora of registrations for the trademark INSTANA, and related trademarks incorporating INSTANA, in many jurisdictions worldwide, including International Trademark Registration No. 1695828, dated August 17, 2022, and French Trademark Registration No. 4865208, dated April 29, 2022 ("the Mark").

The disputed domain name was registered on June 10, 2023. At the time of the filing of the Complaint, the disputed domain name resolved to a website asking visitors to "register" and provide personally identifying information. It currently resolves to a pay-per-click website offering travel and resort links.

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 the Mark because the disputed domain name is identical to the Mark except that the disputed domain name adds a hyphen and the word "space" following the Mark. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, and never engaged in any bona fide commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Mark when registering the disputed domain name and that the disputed domain name was registered in bad faith to confuse Internet users and to obtain personally identifying information.

¹ The Panel considered that it would be useful to visit the Complainant's own website in order to assist it in reaching its determination. On the topic of the Panel conducting such research, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel 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 respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

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 the Mark for the purposes of the Policy by virtue of the use of the Mark since at least 2020 and the Mark's numerous registrations in many jurisdictions. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name's only deviation from the Mark is that the disputed domain name adds a hyphen and the word "space" as a suffix. This slight alteration between the Mark and the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Mark. The Mark is recognizable in the disputed domain name notwithstanding the added hyphen and word. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that 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. Moreover, the disputed domain name resolves to a "login" page, soliciting the Internet visitor to "register" by providing personally identifying information. Using a disputed domain name to collect

personally identifying information can never establish rights or legitimate interests in a disputed domain name. [WIPO Overview 3.0](#), section 2.13.

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.

Numerous factors indicating bad faith registration and use are evident in this case. Firstly, the disputed domain name was registered using a privacy service, suggesting an intent to conceal the registrant's identity. Additionally, the Mark is widely recognized, and it is implausible that the Respondent was unaware of the unique Mark at the time of registration. Furthermore, the disputed domain name resolves to a website designed to trick Internet users into believing they were visiting a website associated with the Complainant using the Complainant's trademark written in the exact same stylized manner, and to provide personally identifying information when creating a bogus account. Based on these compelling factors, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1 and 3.2.

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 <instana-space.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: July 10, 2024