

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. Milendrasinh Devda
Case No. D2024-4052

1. The Parties

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

The Respondent is Milendrasinh Devda, India.

2. The Domain Name and Registrar

The disputed domain name <ibminfotech.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 October 2, 2024. On October 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 / Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 8, 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 October 8, 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 October 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2024. The Respondent sent email communications to the Center on October 11, 2024, and October 14, 2024. The Center notified the Parties on October 31, 2024 that it would proceed to panel appointment.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on November 6, 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 one of the leading innovators in the design and manufacture of technology products since the 1880s. The Complainant is the 49th largest company on the Fortune U.S. 500 list and has been offering products under the trademark IBM since 1924.

The Complainant owns trademark registrations for its famous IBM trademarks in well over one hundred countries, including, for example United States Trademark Registration No. 640,606 in International Class 9, registered on January 29, 1957, and United States Trademark Registration No. 4,181,289 in International Classes 9, 16, 18, 20, 21, 22, 25, 28, 35, and 41, registered on July 31, 2012.

The disputed domain name was registered on March 3, 2016, and, at the time of filing of the Complaint, resolves to a Registrar parked page indicating that it may be available. The Complainant submitted evidence showing that previously the disputed domain name also resolved to a page displaying the Complainant's trademark and "Our Website is Coming Soon" message and providing contact details.

On July 4, 2024, the Complainant sent cease-and-desist letter to the Respondent through the Registrar, with the follow-up on July 30, 2024, to which the Respondent did not 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.

Notably, the Complainant contends that:

(1) the disputed domain name is identical or confusingly similar to the Complainant's trademarks. The disputed domain name consists of the letters "ibm", followed by the words "info" and "tech," and the generic Top-Level Domain ("gTLD") ".com." The letters "ibm" are exactly the same as the IBM trademark. The inclusion of the IBM mark at the beginning of the disputed domain name adds to the confusion between the Complainant and the Respondent as it attracts greater attention to the Complainant's mark. The gTLD ".com" in the disputed domain name should be disregarded and cannot obviate the confusing similarity between the disputed domain name and the IBM trademark.

(2) The Complainant has never licensed, contracted, or otherwise permitted anyone to apply to register the disputed domain name. There is no evidence that the Respondent is using the disputed domain name for a bona fide offering of goods or services, nor is there any evidence of either the Respondent being known by the disputed domain name or having used it in a manner consistent with fair use. The Respondent has been misusing the Complainant's IBM trademark in the disputed domain name in illegitimate ways. The disputed domain name resolves to a "coming soon" or blank webpage with no active content.

(3) The disputed domain name was registered and is being used in bad faith. The only difference between the disputed domain name and the IBM mark is the mere addition of the terms "info" and "tech", which is likely highlighting the Complainant, its well-known information technology products, and its trademark IBM raising a likelihood of consumer confusion with the disputed domain name. The Respondent was well aware of the Complainant's trademarks at the time it registered the disputed domain name. The Respondent has registered the disputed domain name through a privacy shield service, Domains by Proxy.

On July 4, 2024, the Complainant sent a cease-and-desist letter to the Respondent, with the follow-up as of July 30, 2024, asking the Respondent to disable and transfer the disputed domain name. The Respondent did not reply to the Complainant's letters, further showing bad faith. The Respondent's misuse of the disputed domain name is clear evidence of bad faith pursuant to the doctrine of passive holding, as the disputed domain name comprising the Complainant's IBM trademark has not been used in connection with any bona fide and legitimate purpose since its registration date.

The Complainant requests transfer of the disputed domain name.

B. Respondent

The Respondent did not substantively reply to the Complainant's contentions. However, on October 11, 2024, and October 14, 2024, the Respondent sent informal email communications, asking for more information.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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 further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

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 IBM for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the trademark is reproduced within the disputed domain name, followed by the terms "info" and "tech", which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), sections 1.7 and 1.8. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademark IBM.

It is well accepted by UDRP panels that the addition of the TLDs, such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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 Panel notes that the Respondent is not affiliated with the Complainant in any way, nor has he been authorised by the Complainant to use its trademarks, or to seek registration of any domain name incorporating the Complainant’s trademark.

The Complainant has also asserted that the Respondent has no prior rights or legitimate interests in the disputed domain name on the basis that Internet trademark searches show the Complainant and its products/services when using an “IBM” as search terms. Accordingly, the Panel notes that the Respondent is not commonly known by the disputed domain name, whereas the Complainant has prior rights in the trademarks, which precede the Respondent’s registration of the disputed domain name by years.

There is no evidence in the case file that the Respondent is conducting any bona fide business in connection with the disputed domain name under the circumstances where it resolves to the Registrar parked page. Neither there is evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial or fair use or a bona fide offering of goods and services. On the contrary, the Respondent’s prior use of the disputed domain name to resolve to a page displaying the Complainant’s trademark and “Our Website is Coming Soon” message, and inviting users to contact the website operator via the provided contact details together with the composition of the disputed domain name affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant.

Based on the available record, 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 Complainant asserts that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks. In this respect, the Panel takes into account well-known character of the Complainant’s IBM trademark around the world, and the fact that the disputed domain name was registered at least 59 years after the Complainant established registered trademark rights in the IBM trademark. The Respondent has not refuted this contention. Accordingly, without any evidence to the contrary from the Respondent, the Panel infers that the Respondent was aware of the Complainant at the time he registered the disputed domain name.

Additionally, the Respondent has registered the disputed domain name through a privacy shield service, Domains by Proxy. Previous UDRP panels have considered that concealing identity and contact information may point to bad faith in itself. See *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#).

UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current use of the disputed domain name for a Registrar parked page does not prevent a finding of bad faith in the circumstances of this proceeding.

Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) there is no conceivable good faith use to which the disputed domain name could be put by the respondent. [WIPO Overview 3.0](#), section 3.3.

In the present case, the Complainant established registered trademark rights in the IBM mark and is well known in the technology field.; the Complainant has contacted the Respondent twice by means of cease-and-desist letters and the Respondent failed to respond. Furthermore, the Respondent is using a privacy shield; and the Respondent is using disputed domain name as a Registrar parked page with an indication that it "may be available" implying that the disputed domain name may be for sale. According to the evidence provided by the Complainant, the disputed domain name was previously used to display a page featuring the Complainant's trademark, "Our Website is Coming Soon" message, and inviting users to contact the website operator via the provided contact details. The Panel finds that such use of the disputed domain name constitutes bad faith under the Policy.

The Respondent has not provided a substantive response and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use.

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 <ibminfotech.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: November 20, 2024