

## **ADMINISTRATIVE PANEL DECISION**

International Business Machines Corporation v. Rustam Gangawar, Travel Paradise

Case No. DCO2024-0065

### **1. The Parties**

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

Respondent is Rustam Gangawar, Travel Paradise, India.

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

The disputed domain name is <ibmindia.co> which 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 September 13, 2024. On September 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 those in the Complaint (John Doe). The Center sent an email communication to Complainant on September 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Later that same day, Complainant filed an amendment to the Complaint.

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 Respondent of the Complaint, and the proceedings commenced on September 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 20, 2024.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on October 24, 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.

#### **Preliminary Issue: Proper Respondent**

Pursuant to paragraph 1 of the Rules: “Respondent means the holder of a domain-name registration against which a complaint is initiated”. The original Complaint named “John Doe” as Respondent since the available Whois record listed as registrant “Redacted for Privacy, Domains By Proxy, LLC.”. At the Center’s request, the Registrar sent its verification response disclosing Rustam Gangawar, Travel Paradise, as the registrant of the disputed domain name, and thus on September 19, 2024, Complainant filed an amendment to the Complaint adding Rustam Gangawar, Travel Paradise, as Respondent. Since the real underlying registrant has been promptly disclosed, the Panel decides to only have Rustam Gangawar, Travel Paradise, as the proper Respondent.

#### **4. Factual Background**

Complainant, headquartered in the United States, is engaged in the design and manufacture of products that record, process, communicate, store and retrieve information, such as computers and software.

Complainant has rights over the IBM mark for which it holds, among others, United States registration No. 640606 in class 9, registered on January 29, 1957; and United States registration No. 1058803 in classes 1, 9, 16, 37, 41 and 42, registered on February 15, 1977. Complainant also has rights over the IBM figurative mark for which it holds, among others, United States registration No. 1696454 in class 36, registered on June 23, 1992.

The disputed domain name was registered on November 22, 2023. Before the Complaint was filed the disputed domain name was used as an email address to further a fraudulent employment scheme.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy and requests that the disputed domain name be transferred to Complainant. Complainant’s most relevant assertions may be summarized as follows.

Incorporated in 1911, as an amalgamation of three previously existing companies, Complainant officially became International Business Machines in 1924. Complainant has been offering products under the IBM mark ever since. Complainant has owned trademark registrations for IBM in 131 countries all around the world for several decades, and for a broad range of goods and services, including information technology related goods and services.

The disputed domain name is confusingly similar to Complainant’s IBM mark. The disputed domain name consists of the letters “ibm” (not case sensitive), followed by “india”. The inclusion of the IBM mark at the beginning of the disputed domain name adds to the confusion as it attracts greater attention to Complainant’s mark. The additional word “india” does not obviate confusing similarity between them and in fact alludes to Complainant’s presence in India.

Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant has never licensed, contracted, or otherwise permitted anyone to register the disputed domain name. There is no evidence that Respondent is using the disputed domain name for a bona fide offering of goods or

services, nor is there any evidence of either Respondent being known by the disputed domain name or having used it in a manner consistent with fair use.

Respondent has been misusing the disputed domain name in illegitimate ways. Respondent set up email servers under the disputed domain name to send fraudulent emails. Respondent impersonated Complainant by sending emails containing the IBM marks and deceptive email addresses linked to the disputed domain name indicating an affiliation with Complainant's recruitment and career services to solicit communications regarding job postings, collect private and personal information from job applicants, and provide fake job offer letters.<sup>1</sup>

Complainant has a large presence in India and conducts business via its Indian subsidiary (IBM India Pvt Ltd), which is commonly recognized and referenced as "IBM India". Third parties could believe and have reasonably believed that emails sent from the fraudulent email address linked to the disputed domain name were sent by Complainant.

The disputed domain name was registered and is being used in bad faith. A presumption of bad faith may be created solely through the registration of a domain name that is identical or confusingly similar to a famous or widely-known mark. The disputed domain name comprises the world-famous IBM mark. Hence, a presumption should be found that Respondent registered the disputed domain name in bad faith.

Respondent was well aware of Complainant's marks at the time Respondent registered the disputed domain name in 2023, that is, at least 66 years after Complainant established registered trademark rights in the IBM mark. Since Complainant's marks are well-known around the world, that is proof of bad faith at the time of registration.

Additionally, email servers have been activated for the disputed domain name. It is hard to imagine a legitimate way in which such emails would be used. On the contrary, Respondent could use any email address with the disputed domain name for commercial emailing, spamming or phishing purposes. Respondent used the email server attached to the disputed domain name to send emails to Internet users and deceive them into believing they had been hired by Complainant, which further proves that the disputed domain name was registered in bad faith.

The consequence of such illegitimate activities can be detrimental not only to Complainant, but to third parties who may entrust what appears to be Complainant with sensitive information. As a result of the use of the IBM mark in the disputed domain name, and Complainant's reputation as one of the premier manufacturers of computer-related goods and services throughout the world, Respondent is likely to continue leveraging the disputed domain name to further Respondent's phishing scam and perpetuate Respondent's fraudulent activity on additional victims to further deceive Internet users into believing they had been hired by Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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<sup>1</sup>The Complaint includes a copy of an email communication sent on January 4, 2024, from an email address associated with the disputed domain name, along with the exhibits attached thereto.

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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.

#### **A. Identical or Confusingly Similar**

The Panel finds 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 disputed domain name identically reproduces the IBM mark, albeit followed by “india”. The Panel finds the mark is recognizable within the disputed domain name and that said addition of “india” in the disputed domain name does not avoid a finding of confusing similarity between them for the purposes of the Policy ([WIPO Overview 3.0](#), sections 1.7, and 1.8).

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).

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in the disputed domain name. There is no evidence in the case file of any of those, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

The nature of the disputed domain name, confusingly similar to Complainant’s mark, represents a serious risk that Internet users will mistakenly identify it as belonging to or associated with Complainant (or Complainant’s subsidiary in India). Further, the evidence in the file shows that the disputed domain name was used as an email address for sending an email communication, conveying the impression that the sender is associated with Complainant, that is, the disputed domain name was used to deceive third parties by impersonating Complainant’s Indian subsidiary. Such use demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name ([WIPO Overview 3.0](#), section 2.13.1<sup>2</sup>).

The Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

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<sup>2</sup> See also *Syngenta Participations AG v. Guillaume Texier, Gobain Ltd*, WIPO Case No. [D2017-1147](#): “A registrant cannot acquire rights or legitimate interests by the use of a domain name as an email address from which to send phishing emails”.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

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).

Having reviewed the case file, the Panel finds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. It is uncontested that Complainant's IBM mark is well known internationally. As noted above, the disputed domain name reflects Complainant's prior registered IBM mark in its entirety, followed by "india". The evidence in the case file indicates that Respondent targeted Complainant with the intention of impersonating Complainant's Indian subsidiary in order to deceive third parties through phishing emails. The fact that the email communication, sent to a prospective job applicant of Complainant (from an email account linked to the disputed domain name), shows Complainant's IBM marks and the full name of Complainant's Indian subsidiary, leads to the inevitable conclusion that Respondent registered and used the disputed domain name in bad faith ([WIPO Overview 3.0](#), section 3.4<sup>3</sup>).

Based on the available record, the Panel finds that 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 <ibmindia.co> be transferred to Complainant.

*/Gerardo Saavedra/*

**Gerardo Saavedra**

Sole Panelist

Date: November 7, 2024

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<sup>3</sup> See *BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#): "...the use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith". See *BinckBank N.V. v. Helo Holdings LTD*, WIPO Case No. [DNL2010-0014](#): "Phishing activities pose a severe threat to customers, trademark holders and third parties".