

ADMINISTRATIVE PANEL DECISION

International Business Machines Corporation v. noon noon
Case No. D2022-4199

1. The Parties

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

Respondent is noon noon, United States.

2. The Domain Name and Registrar

The disputed domain name <ibmusdt.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 November 4, 2022. On November 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 2022, 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 (Domain Administrator, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to Complainant on November 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 10, 2022.

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 November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. Respondent did not submit any

response. Accordingly, the Center notified Respondent's default on December 9, 2022.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on January 4, 2023. 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

Complainant is a multinational company, based in the United States. For decades prior to the registration of the disputed domain name, Complainant has offered information technology and related goods and services under the IBM mark. Complainant has several registered trademarks for its IBM mark. These include, among others, United States Registration Nos. 1243930 (registered June 28, 1983) and 1696454 (registered June 23, 1992).

The disputed domain name was registered on August 5, 2022. Respondent has used the disputed domain name to resolve to a webpage that requests login credentials and personal information. Moreover, Complainant has provided evidence that the disputed domain name has been used in association with a "cryptocurrency pyramid scheme". Complainant has not authorized any activities by Respondent, nor any use of its trademarks thereby.

5. Parties' Contentions

A. Complainant

Complainant contends that the (i) disputed domain name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

In particular, Complainant contends that it has established rights in its "world-famous trademark", which has significant value as indicated by the IBM mark's ranking of 18 in the 2021 Interbrand survey and by Complainant's position as number 42 in the Fortune 500 companies of 2021. Complainant contends that Respondent has merely added the term "usdt", which "could reasonably be understood as the ticket symbol for the cryptocurrency Tether coin". Complainant asserts that Respondent has no rights or legitimate interest in the domain name registration or use of the disputed domain name. Rather, Complainant contends that Respondent has acted in bad faith in setting up a website meant to take advantage of Complainant's trademark to confuse web users, including by Respondent's promotion of the disputed domain name via various social media platforms. In this regard, Complainant asserts that Respondent has used Complainant's mark in order to obtain sensitive personal and financial information from consumers and employees of Complainant for Respondent's own commercial gain.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

This Panel must first determine whether the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is. The disputed domain name directly incorporates Complainant's registered IBM mark, with the addition of the letters "usdt".

Numerous UDRP panels have agreed that where a trademark is recognizable within a disputed domain name the supplementing or modifying of a trademark with descriptive words or letters does not prevent a finding of confusing similarity for purposes of satisfying this first prong of paragraph 4(a)(i) of the Policy. See, for example, *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. [D2000-1614](#); *BS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. [D2000-1065](#).

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Policy provides some guidance to respondents on how to demonstrate rights or legitimate interests in the domain name at issue in a UDRP dispute. For example, paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include: (i) use of the domain name "in connection with a *bona fide* offering of goods or services"; (ii) demonstration that Respondent has been "commonly known by the domain name"; or (iii) "legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".

Respondent did not submit a reply to Complainant's contentions, and Respondent did not allege or otherwise provide any information that would support a finding that Respondent has rights or legitimate interest in the disputed domain name. Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interest in the disputed domain name, which Respondent has not rebutted. Moreover, Complainant has provided evidence that Respondent has used the disputed domain name, incorporating Complainant's widely-known IBM mark, to resolve an apparent phishing login page seeking sensitive login credentials and personal information, as well as in furtherance of a fraudulent cryptocurrency scheme distributed via various social media channels and making use of the Complainant's IBM mark. Such illegitimate activities can never confer rights or legitimate interests in a respondent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.13.

The Panel therefore finds that Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. For example, paragraph 4(b)(iv) of the Policy states that bad faith can be shown where "by using the domain name [respondent has] intentionally attempted to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or of a product or service on [the] website or location". As noted in Section 4 of this Panel's

decision, Respondent has used the disputed domain name to resolve to a webpage that requests login credentials and personal information. Moreover, Complainant has provided evidence that the disputed domain name has been used in association with a fraudulent cryptocurrency scheme taking advantage of the Complainant's widely-known IBM mark in its distribution via various social media channels. Respondent is thus trading on the goodwill of Complainant's trademarks to attract Internet users, presumably for Respondent's own commercial gain, and with prior knowledge of Complainant's rights in the IBM mark. Furthermore, as noted above, use of a domain name for *per se* illegitimate activity can never confer rights or legitimate interests on a respondent, and such behavior is manifestly considered evidence of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy.

7. Decision

For all 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 <ibmusdt.com> be transferred to Complainant.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Dated: January 18, 2023