

ADMINISTRATIVE PANEL DECISION

Kyndryl, Inc. v. Leandro Ramos
Case No. D2022-4838

1. The Parties

Complainant is Kyndryl, Inc., United States of America, represented by Demys Limited, United Kingdom.

Respondent is Leandro Ramos, Brazil.

2. The Domain Name and Registrar

The disputed domain name is <kyndrylbr.com> which is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 16, 2022. On December 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 20, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

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 Respondent of the Complaint, and the proceedings commenced on January 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 27, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on February 16, 2023. This Panel finds that it was properly constituted. This 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 designs, builds, manages and modernizes information systems. Complainant's services include a wide range of technology infrastructure systems designed and managed for clients, such as cloud services, artificial intelligence, digital workplaces, hybrid IT environments and other emerging technology solutions.

Complainant has rights over the KYNDRYL mark for which it holds, among others, registration No. 30047/2021 with the Industrial Property Office of the Republic of Mauritius, granted on March 1, 2021, in classes 9, 35, 37, 38, 41 and 42; and International registration No. 1628208, granted on June 14, 2021, in classes 9, 35, 37, 38, 41 and 42.

The disputed domain name was registered on August 24, 2022. At the time the Complaint was filed the website linked to the disputed domain name was inactive, and merely showed "Index of /", "Name Last modified Size Description", "cgi-bin/ 2022-08-24 21:44".

5. Parties' Contentions

A. Complainant

Complainant's assertions may be summarized as follows.

Complainant is one of the largest IT service providers in the world. Complainant employs more than 88,000 people and operates in 63 countries.

Complainant's parent was initially formed as a wholly-owned subsidiary of International Business Machines Corporation ("IBM") in September 2021, from which it spun-off and became an independent, publicly-traded company in November 2021. IBM's spin-off of its managed infrastructure business segment was announced since October 2020, and in April 2021, IBM disclosed that Complainant's name would be Kyndryl, which derived from the words kinship and tendril. Complainant's name and formation, followed by such spin-off, were covered in several press releases and media articles.

Complainant is the owner of a large global portfolio of registered trademarks for KYNDRYL. Further, Complainant operates an official website at "www.kyndryl.com". Complainant and its group have already defended their rights under the UDRP, such as in *Kyndryl Holdings Inc. v. 石磊 (Lei Shi)*, WIPO Case No. [D2021-4218](#), and *Kyndryl, Inc. and Kyndryl Australia Pty Ltd v. Mohamedzakwan Mohamedsharif Mansuri*, WIPO Case No. [DAU2022-0007](#).

The disputed domain name is confusingly similar to Complainant's mark. The disputed domain name incorporates Complainant's KYNDRYL mark in its entirety, which is the first, most dominant and recognizable element of the disputed domain name. The adornment "br" does nothing to distinguish the disputed domain name from Complainant's name and mark. Given Respondent's location in Brazil, said "br" characters most likely represent the two-letter country code for Brazil.

Respondent does not have any rights or legitimate interests in the disputed domain name.

There is no evidence that Respondent has been commonly known as "kyndryl" or "kyndryl br", and Respondent's name is not recognizable anywhere in the disputed domain name. Respondent has not received any permission, consent or acquiescence from Complainant to use its name or marks in association with any domain name, service or product, and there is no evidence that Respondent owns any trademarks incorporating the terms "kyndryl" or "kyndryl br", or that Respondent has ever traded legitimately under such names.

Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor is it making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name does not resolve to a live website and is being passively held. Such use does not constitute a legitimate noncommercial or fair use of the disputed domain name.

The incorporation of Complainant's highly distinctive name and mark in the disputed domain name falsely suggests affiliation between Respondent and Complainant. An Internet user typing in the disputed domain name or finding it via a search engine, would reasonably expect it to be associated with, sponsored or endorsed by Complainant. Given the confusing similarity of the disputed domain name with Complainant's name and mark, there is no conceivable use to which the disputed domain name could be put, now or in the future, that would confer any legitimate interest upon Respondent.

The disputed domain name was registered and is being used in bad faith.

Complainant's name and mark is a made-up term and as such highly distinctive. Complainant's launch was widely reported across the world, and as such Complainant's mark is well-known. A Google search for KYNDRYL shows that all the results, at least on the first three pages, refer to Complainant.

The nature of the disputed domain name is in and of itself confusing. The disputed domain name incorporating Complainant's name and mark in its entirety, with the letters "br" which do nothing to distinguish the disputed domain name from them, is, at first glance, confusing to the average Internet user. Given the reputation and distinctiveness of Complainant's name and mark, it is inconceivable that Respondent could have registered the disputed domain name without having Complainant's name and mark in mind and with good faith intentions.

The disputed domain name does not resolve to a live website. Passive holding of the disputed domain name constitutes bad faith. There is no evidence of actual or contemplated good faith use on the part of Respondent. Considering that the disputed domain name is confusingly similar to Complainant's unique name and mark, there is no conceivable use to which the disputed domain name could be put now or in the future that could be considered good faith use.

The disputed domain name is configured with provision for email communication as its DNS zonefile is equipped with Mail eXchanger ("MX") and Sender Policy Framework ("SPF") records, and is therefore capable of email communication. Thus anyone receiving an email originating from the disputed domain name would reasonably assume that it was sent from Complainant.

Complainant sent an email communication to Respondent on September 22, 2022, using the details on the public WhoIs but did not receive any response, and cannot confirm if the details listed on such public WhoIs really correspond to Respondent's true identity. Respondent's non-response and failure to give an explanation to Complainant's contentions is an admission of Complainant's contentions.

Complainant requests that the disputed domain name be transferred to 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".

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. [D2003-0465](#); and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

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) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is undisputed that Complainant has rights over the KYNDRYL mark.

Since the addition of a generic Top-Level Domain ("gTLD") *i.e.* ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the KYNDRYL mark in its entirety, albeit followed by "br". It is clear to this Panel that the KYNDRYL mark is recognizable in the disputed domain name and that the addition of such characters in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant contends that it has not authorized Respondent to use its KYNDRYL mark,¹ that Respondent is not commonly known by such mark or the disputed domain name, that Respondent is not using the disputed domain name in connection with any *bona fide* offer of products or services nor is it making a legitimate noncommercial or fair use of the disputed domain name, and that the disputed domain name falsely suggests affiliation with Complainant and its mark. The evidence in the file shows that the website linked to the disputed domain name may be deemed inactive. Nonetheless, the disputed domain name reflects Complainant's name and mark in its entirety (albeit followed by the characters "br"), and thus it seems to this Panel that the composition of the disputed domain name carries a risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name (see section 2.1 of the [WIPO Overview 3.0](#)). In the file there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

Taking into consideration that the registration and use of the KYNDRYL mark preceded the creation of the disputed domain name, that such mark appears to be a coined term, that Complainant's formation and name

¹ See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#): "There is no evidence that the Complainant authorized the Respondent to register the disputed domain name or to use the CASIO trademark, with or without immaterial additions or variants. These circumstances are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent."

selection were the subject matter of a number of press releases and media coverage, and Complainant's Internet presence through "www.kyndryl.com", this Panel is of the view that Respondent should have been aware of the existence of Complainant and its mark at the time it obtained the registration of the disputed domain name, which is indicative of bad faith.

The concept of a domain name "being used in bad faith" is not limited to a domain name with an active website on the Internet (see "*Dr. Martens*" *International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. [D2017-0246](#); and section 3.3 of the [WIPO Overview 3.0](#)). In the case at hand, in addition to the circumstances mentioned above, Respondent's bad faith may be deduced from the following facts: (i) Respondent is using Complainant's name and mark at the disputed domain name (albeit coupled with just an irrelevant addition which, in the case at hand, may be indicative of Brazil) without Complainants' authorization; (ii) the lack of any basis in the file to conceive a legitimate use of the disputed domain name by Respondent;² (iii) the risk of implied affiliation of the disputed domain name with Complainant's name and mark, which coupled with the fact that the disputed domain name is configured to send emails, makes this Panel to consider that the disputed domain name may potentially be used for phishing activities;³ (iv) Respondent's lack of response to Complainant's cease-and-desist email communication (see *Ebay Inc. v. Ebay4sex.com and Tony Caranci*, WIPO Case No. [D2000-1632](#)); and (v) Respondent's failure to appear in this proceeding, which is indicative that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its substantial similarity with, and with the likely intention to benefit from, Complainant's name and mark and potentially disrupt Complainant's business or deceive third parties, which denotes bad faith.⁴

In light of the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <kyndrylbr.com> be transferred to Complainant.

/Gerardo Saavedra/
Gerardo Saavedra
Sole Panelist
Date: March 2, 2023

² See *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#): "Respondent has provided no evidence or suggestion of a possible legitimate use of the Domain Name. Thus, in the words of Telstra, it is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent that would not be illegitimate."

³ See *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-3924](#): "the mere presence of mail servers and SPF records represents a severe risk of phishing or other fraudulent and abusive activities [...] it is rather difficult to imagine that mail server attached to disputed domain name would be used for any good faith purposes." See also *Twitter, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Domain Support*, WIPO Case No. [D2015-1488](#); and section 3.4 of the [WIPO Overview 3.0](#).

⁴ See *Jafra Cosmetics, S.A. de C.V. and Jafra Cosmetics International, S.A. de C.V. v. ActiveVector*, WIPO Case No. [D2005-0250](#): "due to the intrinsically distinctive character of Complainants' trademarks, it is inconceivable that the contested domain name would have been registered and used if it were not for exploiting the fame and goodwill of Complainants' marks by diverting Internet traffic intended for Complainant."