

ADMINISTRATIVE PANEL DECISION

Kyndryl, Inc. v. Milen Radumilo
Case No. D2024-2908

1. The Parties

The Complainant is Kyndryl, Inc., United States of America ("United States"), represented by Demys Limited, United Kingdom.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <kyndryl.com> is registered with Domainhysteria.com LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 16, 2024. On July 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 (Perfect Privacy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 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 amended Complaint on July 29, 2024.

The Center verified that the Complaint together with the amended 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 August 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 11, 2024.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on September 18, 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 a company incorporated in the United States which belongs to the Kyndryl Holdings, Inc. group. The Complainant designs, builds, manages and modernizes complex, mission-critical information systems. The Complainant is specialized in technology solutions such as infrastructure systems, cloud services, artificial intelligence, digital workplaces, hybrid IT environments, among others. The Complainant's group (i.e. Kyndryl Holdings, Inc) is a public company, as it began trading shares on the New York Stock Exchange since 2021. The Complainant has over 4,000 clients (including 75 percent of the companies listed in the Fortune 100 index), more than 90,000 employees, and operates in over 60 countries.

The Complainant is the owner of several trademark registrations including:

Trademark	Registration No.	Jurisdiction	Date of Registration	Class
KYNDRYL	4754262	France	August 6, 2021	Class 9, Class 35, Class 37, Class 38, Class 41 and Class 42.
KYNDRYL	1628208	International (Australia, Brazil, Canada, European Union -where Romania is a Member State, United Kingdom, Israel, India, Japan, Republic of Korea, Mexico, Malaysia, Norway, New Zealand, Philippines, Singapore, Thailand, Türkiye, United States)	June 14, 2021	Class 9, Class 35, Class 37, Class 38, Class 41 and Class 42.
KYNDRYL	1453872	Benelux (Belgium, Netherlands, Luxembourg)	November 16, 2021	Class 16.

The Complainant operates its official website through the domain name <kyndryl.com>.

The disputed domain name was registered on September 19, 2023. At the date of writing of this Decision, the disputed domain name resolves to a website comprising automated Pay-Per-Click ("PPC") 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 the following:

I. Identical or Confusingly Similar

That the disputed domain name is identical to the Complainant's KYNDRYL trademarks differing only by the omission of the letter "l" at its end (citing *Easygroup IP Licensing Limited v. AHN*, WIPO Case No. [D2005-0949](#) and *Cresset Administrative Services Corporation and Cresset Partners LLC v. 杨智超 [Zhi Chao Yang]*, WIPO Case No. [D2022-2093](#)).

That the typographical variant "kyndry" is a common misspelling of the Complainant's KYNDRYL trademarks which have no common or widespread syntactical meaning, and that therefore it cannot be reasonably ascribed any meaning that is not related to the Complainant.

That the Top-Level Domain ("TLD") ".com" is required only for technical reasons and can thus be ignored for the purposes of determining confusing similarity between the disputed domain name and the Complainant's KYNDRYL trademarks.

II. Rights or Legitimate Interests

That the Respondent does not have any rights or legitimate interests in the disputed domain name (citing section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

That there is no evidence which suggests that the Respondent has been commonly known as KYNDRYL or KYNDRY prior to registering the disputed domain name (citing section 2.3 of the [WIPO Overview 3.0](#)).

That there is no evidence which suggests that the Respondent owns any trademark incorporating the "kyndryl" or "kyndry" terms.

That the Respondent is not a licensee of the Complainant and has not received any permission from the Complainant to use its name or its KYNDRYL trademarks.

That the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor making a legitimate noncommercial or fair use thereof (citing section 2.5 of the [WIPO Overview 3.0](#)).

That the disputed domain name resolves to an inactive website showing PPC links, using the Complainant's highly distinctive name to misdirect users to the disputed domain name. (citing sections 2.5.3 and 2.9 of [WIPO Overview 3.0](#)), and that even if the PPC links have been made available automatically, the Respondent is still responsible for such advertising.

That the disputed domain name is configured with MX records which means that the disputed domain name can be used for email communications, which would carry a high risk of implied affiliation. And that said type of use would not give the Respondent a legitimate interest on the disputed domain name.

That the Respondent listed the disputed domain name for sale, and that said offering cannot be interpreted as a legitimate interest in the disputed domain name.

That under the previous arguments, the Complainant has established a prima facie case (citing section 2.1 of the [WIPO Overview 3.0](#), *supra*).

III. Registered and Used in Bad Faith

The Complainant contends that the Respondent intentionally attempted to attract Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's KYNDRYL trademarks.

Furthermore, the Complainant argues that it is inconceivable that the Respondent did not know the Complainant's KYNDRYL trademarks when registering the disputed domain name (citing *Kyndryl, Inc. v. Carolina Rodrigues, Fundación Comercio Electrónico*, WIPO Case No. [D2022-3868](#)).

The Complainant asserts that the Respondent's omission of the letter "l" in the disputed domain name creates an initial interest confusion with the Complainant's KYNDRYL name and trademarks *vis-à-vis* Internet users.

The Complainant alleges that the display of PPC advertisements in association with a domain name that is confusingly similar to a complainant's trademark is sufficient to conclude bad faith registration and use, because the Respondent has used the attractive force of the Complainant's highly distinctive KYNDRYL name and trademarks to gain revenue from diverting Internet users (citing section 3.5 of the [WIPO Overview 3.0](#) and *Kyndryl, Inc. v. Carolina Rodrigues, Fundación Comercio Electrónico*, *supra*).

The Complainant argues that given that the disputed domain name is configured with MX and SPF records, the Respondent is capable of effective email communication, and that if anyone familiar with the Complainant received an email originated from the disputed domain name, they would have assumed that it had been sent by the Complainant (citing *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundación Comercio Electrónico*, WIPO Case No. [D2021-3924](#)).

The Complainant contends that the Respondent registered the disputed domain name to list it for sale by taking advantage of the similarity between the disputed domain name and the Complainant's KYNDRYL trademarks, offering it for GBP 544.15. That, given the similarity between the Complainant's KYNDRYL trademarks and the disputed domain name, the latter would be of no value to anyone aside from the Complainant or a competitor.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainants must prove in order to successfully request remedies:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainants have rights;
- (ii) that the Respondent has no rights or legitimate interests in connection to the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Given the Respondent's default and therefore, failure to specifically address the case merits as they relate to the three UDRP elements, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#); *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#); see also [WIPO Overview 3.0](#), section 4.3).

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

The disputed domain name entirely comprises the Complainant's KYNDRYL trademark with the omission of a letter "l", and the addition of the TLD ".com". The Panel finds that the Complainant's KYNDRYL trademark is recognizable within the disputed domain name (see [WIPO Overview 3.0](#), section 1.9). It is also well established that the addition of a TLD is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Accordingly, the disputed domain name is confusingly similar to the Complainant's KYNDRYL trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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. Specifically, the Respondent has failed to submit evidence of bona fide or legitimate noncommercial or fair use of the disputed domain name. No evidence was provided either in connection with the Respondent being commonly known by the disputed domain name.

Furthermore, the Panel finds that subtle misspellings of a complainant's mark in a domain name can also impersonate the complainant, as there is a risk that Internet users will not notice the difference between such misspelling and the complainant's mark (see *Banque et Caisse d'Epargne de l'Etat, Luxembourg, v. Domain Admin, Whoisprotection.cc / hans larsson*, WIPO Case No. [D2022-1505](#)). Therefore, the Panel considers that the composition of the disputed domain name carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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.

The Complainant has ascertained its rights over its KYNDRYL trademarks. The dates of registration of the KYNDRYL trademarks significantly precede the date of registration of the disputed domain name. The KYNDRYL trademarks are comprised of a fanciful term ("kyndryl") that does not correspond to a dictionary term. The fact that the Respondent registered the disputed domain name which is confusingly similar to the Complainant's KYNDRYL trademark shows that the Respondent has targeted the Complainant and its trademarks, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#); *Dream Marriage Group, Inc. v. Romantic Lines LP, Vadim Parhomchuk*, WIPO Case No. [D2020-1344](#); and *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#)).

The Panel notes that the Complainant has previously filed a case against the Respondent under the Policy, in which the relevant panel ordered the transfer of a domain name that entailed another case of typosquatting: <hkyndryl.net> (see *Kyndryl, Inc. v. Milen Radumilo*, WIPO Case No. [D2023-4850](#)). Also, the Panel would like to note that the Respondent has been a party to at least 223 previous disputes under the Policy, a vast majority of which have been decided against the said Respondent, which serves as another indicator of bad faith, showing the Respondent's cybersquatting pattern, according to section 4(b)(ii) of the Policy (see [WIPO Overview 3.0](#) section 3.1.2).

Moreover, the disputed domain name resolves to a parked website comprising PPC links. Therefore, this Panel considers that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant and its KYNDRYL trademarks by misleading Internet users, for commercial gain, to the website to which the disputed domain name resolves (and the websites to which the PPC links made available therein re-direct), by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of said websites, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *Ustream.TV, Inc. v. Vertical Axis, Inc.*, WIPO Case No. [D2008-0598](#). "The Respondent's use of the disputed domain name for a PPC parking page constitutes bad faith use because the Respondent is attracting Internet users to its website by causing confusion as to whether its website is, or is associated with, the Complainant or its services. This conduct disrupts the Complainant's business by diverting consumers away from the Complainant's website. The diversion is for the Respondent's commercial gain because the Respondent receives PPC revenue from those visitors to its website who click through to the advertising on the site. Thus, the Respondent's conduct constitutes classic bad faith registration and use under paragraph 4(b)(iv) of the Policy [...]").

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 <kyndry.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: October 2, 2024