

ADMINISTRATIVE PANEL DECISION

Kyndryl, Inc. v. Hubert Kohler
Case No. D2023-1975

1. The Parties

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

The Respondent is Hubert Kohler, Germany.

2. The Domain Name and Registrar

The disputed domain name <kyndryl.vip> is registered with Blue Razor Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 3, 2023. On May 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceeding commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on June 15, 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

A. Complainant

The Complainant is a company headquartered in New York in the United States and a provider of a wide range of information technology services under the trade mark KYNDRYL (the “Trade Mark”). The Complainant was founded in 2021 as a spin-off of the former global technology services business of IBM. With more than 88,000 employees and operations in 63 countries, the Complainant is one of the largest IT service providers in the world.

On April 21, 2021, the Complainant announced the launch of its company name and Trade Mark.

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including International registration No. 1628208, with a registration date of June 14, 2021; and Mauritian registration No. 30047/2021, with a registration date of March 1, 2021.

B. Respondent

The Respondent is an individual located in Germany.

In a prior proceeding between the Parties under the UDRP (*Kyndryl, Inc. v. Hubert Kohler*, WIPO Case No. [D2022-4488](#)), the panel (i) found that the Respondent had no rights or legitimate interests in respect of the domain names <kyndryl.global>, <kyndryl.group> and <kyndryl.network> (each of which had been registered by the Respondent on April 21, 2021); (ii) found that the Respondent had registered and used the domain names in bad faith; and (iii) ordered the transfer of the domain names to the Complainant.

In an email to the Complainant dated March 17, 2023, the Respondent offered to transfer the disputed domain name and another domain name registered by the Respondent, domain name <kyndryll.de>, to the Complainant in exchange for USD 4,800.

C. The Disputed Domain Name

The disputed domain name was registered on April 21, 2021.

D. Use of the Disputed Domain Name

The disputed domain name previously resolved to an English language parking page with sponsored links relating to IT services and also including a “Get This Domain” link (the “Website”). It has also previously been offered for sale for a minimum price of USD 8,900 via the Afternic platform.

As at the date of this Decision, it is resolved to a “This domain may be available for sale” website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through registration and use.

Disregarding the generic Top-Level Domain ("gTLD") ".vip", the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden of production is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, (1) the disputed domain name was registered on the official launch date of the Complainant's Trade Mark; (2) the disputed domain name has previously been resolved to a parking page with sponsored links related to IT services, the services provided by the Complainant since 2021 under the Trade Mark; (3) the Respondent has offered to sell the disputed domain name via the Afternic platform for USD 8,900; and (4) the Respondent has offered to transfer the disputed domain name (together with the domain name <kyndryl.de>) to the Complainant for USD 4,800.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name, and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the manner of the registration and use of the disputed domain name: (i) the fact the disputed domain name was registered on the same day that the Complainant publicly-announced its company name; (ii) the Respondent's offers to sell the disputed domain name; and (iii) the Respondent's pattern of conduct of preventing the Complainant from reflecting its Trade Mark in domain names, the Panel finds that the requisite element of bad faith has been made out under paragraphs 4(b)(i), 4(b)(ii) and 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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, <kyndryl.vip>, be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: June 22, 2023