

## ADMINISTRATIVE PANEL DECISION

Kyndryl, Inc. v. Name Redacted  
Case No. D2023-4239

### 1. The Parties

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

Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <kyndrylhq.com> (the “Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2023. On October 12, 2023, the Center transmitted to the Registrar a request for registrar verification in connection with the Domain Name. On October 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the current registrant of the Domain Name is Bluehost Holding Account. The Center sent an email to Complainant on November 14, 2023, providing the registrant and contact information disclosed by the Registrar. Complainant filed an amended Complaint on November 23, 2023.

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”).

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<sup>1</sup>Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on November 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2023. On November 28, 2023, an email was received claiming an identity theft situation. On December 21, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 10, 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 Complaint contains the following allegations:

“The Complainant – Kyndryl, Inc. – is a company incorporated in the United States of America and is an entity within the Complainant’s group which ultimately operates under the name Kyndryl Holdings, Inc. The Complainant designs, builds, manages and modernizes complex, mission-critical information systems. The Complainant was IBM’s former Global Technology Services infrastructure services business comprising more than a quarter of IBM’s employees as well as over 4,000 clients. 75 percent of Fortune 100 companies are the Complainant’s clients. The Complainant generated revenues of USD \$17 billion in fiscal year 2023. Currently, the Complainant is one of the largest IT service providers in the world. The Complainant employs more than 90,000 people and operates in over 60 countries.”

“The name of the Complainant, Kyndryl, was announced on April 12, 2021, and is derived from the words ‘kin’ and ‘tendril’ to represent the symbol of growing collaboration to foster human progress. [...]”

“The 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.”

“On November 4, 2021, the Complainant’s group company, Kyndryl Holdings, Inc., began trading shares on the New York Stock Exchange.”

Annexed to the Complaint are various April 12, 2021 news articles (such as Financial Post, Bloomberg, and IT World Canada) announcing that IBM’s spinoff company would be named “Kyndryl.”

Complainant owns the domain name <kyndryl.com> and operates a commercial website via that domain name.

Complainant holds several trademark registrations for the mark KYNDRYL, including French Reg. No. 4754262 registered on April 12, 2021, and International Reg. No. 1628208 registered on June 14, 2021.

The Domain Name was registered on July 2, 2023. The Domain Name does not resolve to an active website.

On July 24, 2023, Complainant’s counsel sent Respondent a cease-and-desist letter demanding the transfer of the Domain Name to Complainant. Complainant’s counsel sent a chaser email on August 17, 2023. Complainant has not received a reply to this letter.

On October 14, 2023, the Registrar sent an email to the Center advising that the account for the Domain Name had been “deactivated for fraud.” As noted above (footnote 1), it appears that the actual person who registered the Domain Name has improperly used the name of another person, the named Respondent. On October 24, 2023, the Registrar confirmed to the Center as follows: “The normal UDRP process can

continue as indicated previously, we moved the domain as to ensure the domain did not inadvertently get transferred out.”

On November 28, 2023, the individual in whose name the Domain Name was registered sent the following email to the Center:

“Hello my name is [redacted]. I did not create the domain name in question. Also the only correct contact information you have listed for me is my personal name and address. The phone numbers, emails, and company details are not mine. Should I be concerned that this is some type of identity theft scenario?”

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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

The Panel concludes that Complainant has rights in the trademark KYNDRYL through registration and use demonstrated in the record.

With respect to identity or confusing similarity, 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel concludes that the Domain Name is confusingly similar to the KYNDRYL mark. The Domain Name incorporates the KYNDRYL mark in its entirety, and adds the letters “hq.” The Panel concludes that, notwithstanding these additional letters, Complainant’s mark is entirely reproduced in, and is recognizable within, the Domain Name. Accordingly, the Domain Name is confusingly similar to Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Complainant has established Policy paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a 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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward, either in response to the Complaint in this proceeding or in response to the July 24, 2023 cease-and-desist letter, to dispute Complainant's allegations or articulate some *bona fide* basis for registering the Domain Name. On the undisputed record, the Panel concludes that Respondent targeted Complainant's inherently distinctive mark ("Kyndryl" is a coined term) and has used another person's identity in order to register the Domain Name. Such conduct is clearly illegitimate.

Complainant has established Policy paragraph 4(a)(ii).

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

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that 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 Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section. It is clear that Respondent had Complainant's fanciful mark in mind when registering the Domain Name.

Moreover, Respondent's passive holding of the Domain Name does not prevent a finding of bad faith use under the Policy. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Domain Name here does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and

(iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel finds that the inherent distinctiveness of Complainant's trademark, Respondent's failure to respond to the cease-and-desist letter, Respondent's failure to respond to the Complaint, and Respondent's apparent identity theft in the course of registering the Domain Name, lead to the conclusion that there is no conceivable good faith use to which the Domain Name could be put by Respondent. As such, the Panel concludes that Respondent's passive holding of the Domain Name constitutes bad faith use.

Complainant has established Policy paragraph 4(a)(iii).

## 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 Domain Name <kyndrylhq.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: January 23, 2024