

## **ADMINISTRATIVE PANEL DECISION**

Kyndryl, Inc. v. Milen Radumilo  
Case No. D2023-4850

### **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 <hkyndryl.net> is registered with Communigal Communications Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 2023, 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 (Privacy Protection Service, Provided through Communigal Communication Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 2023, 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 December 5, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on January 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 and is an entity within the Complainant's group which operates under the name "Kyndryl Holdings, Inc". The Complainant designs, builds, manages, and modernizes complex, mission-critical information systems. 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.

The Complainant was IBM's former Global Technology Services infrastructure division comprising more than a quarter of IBM's employees as well as over 4,000 clients. The Complainant generated revenues of USD 17 billion in the 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 "tendrill" to represent the symbol of growing collaboration to foster human progress. On November 4, 2021, the Complainant's group company, "Kyndryl Holdings, Inc.", began trading shares on the New York Stock Exchange.

The Complainant is the owner of several trademarks for KYNDRYL ("KYNDRYL trademark"), including:

- French Trademark Registration KYNDRYL No. 4754262, registered on August 6, 2021;
- International Trademark Registration KYNDRYL No. 1628208, registered on June 14, 2021, designated *inter alia* for United States, United Kingdom and India; and
- Benelux Trademark Registration KYNDRYL No. 1453872, registered on November 16, 2021.

The Complainant is also owner of several domain names including its KYNDRYL trademark, such as the domain name <kyndryl.com>, registered on February 26, 2021.

The disputed domain name was registered on September 18, 2023. The Complainant has provided evidence showing that the disputed domain name resolved to a variety of unrelated third-party websites apparently selected at random, such as "www.networkpcccontrol.com", "www.avira.com", "www.totalav.com" and "www.adidas.ch", including attempts to mislead Internet users into downloading malware, and websites with Pay-Per-Click ("PPC") advertising. At the time of the decision, the disputed domain name does not resolve to any secure website.

#### **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 as follows:

On the first element of the Policy, the Complainant claims trademark rights to KYNDRYL and that the disputed domain name is confusingly similar to the Complainant's KYNDRYL trademark.

The name KYNDRYL is fanciful and derived from the words “kin” and “tendrill”. The Complainant is the owner of a large global portfolio of registered trademarks for the term KYNDRYL. Further, the oldest of its KYNDRYL trademark pre-dates the registration of the disputed domain name by more than two years. The disputed domain name incorporates the Complainant’s KYNDRYL trademark in its entirety, with the addition of the prefix “h”. The letters “h” and “k” are two spaces away on a standard QWERTY keyboard. Moreover, the Complainant’s KYNDRYL name and KYNDRYL trademark is the most dominant and recognizable element of the disputed domain name. The addition of the letter “h” does nothing to distinguish the disputed domain name from the Complainant’s name and trademark. The generic Top-Level Domain (“gTLD”) “.net” is required only for technical reasons and, as is common in dispute proceedings, can be ignored for the purposes of comparison of the disputed domain name to the KYNDRYL trademark.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has found no evidence that the Respondent has been commonly known as KYNDRYL or HKYNDRYL prior to or after the registration of the disputed domain name. Furthermore, the Respondent is not a licensee of the Complainant and has not received any permission, consent or acquiescence from the Complainant to use its name or trademarks in association with the registration of the disputed domain name or, indeed, any domain name, service or product. Moreover, the Complainant has found no evidence that the Respondent owns any trademarks incorporating the terms KYNDRYL or HKYNDRYL. Equally, the Complainant has found no evidence that the Respondent has ever traded legitimately under the business names KYNDRYL or HKYNDRYL. Given the confusing similarity of the disputed domain name to the Complainant’s name and trademarks, 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 the Respondent.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The incorporation of the Complainant’s highly distinctive KYNDRYL name and trademark, which is the most recognizable and dominant element of the disputed domain name, falsely suggests affiliation between the Respondent and the Complainant. The adornment does nothing to dispel this confusion, and that an Internet user typing in the disputed domain name or finding it via a search engine, would reasonably expect the disputed domain name to be associated with, sponsored or endorsed by the Complainant. As noted, the disputed domain name resolves to a variety of unrelated third-party websites apparently selected at random. None of the third-party websites that the disputed domain name ultimately resolves to confer any rights or legitimate interests upon the Respondent in respect of the disputed domain name. Further, at least one website that the disputed domain name resolves to attempts to mislead Internet users into downloading malware. The Complainant cannot envisage any circumstances where encouraging Internet users to download malicious software would confer *bona fide* rights or legitimate interest on the Respondent. Moreover, the Complainant notes that the disputed domain name on occasion also resolves to an unrelated third-party shop and a website displaying PPC advertising. The PPC advertising links capitalize on the value and recognition of the Complainant’s KYNDRYL name and trademark. The disputed domain name uses the attractive force of the Complainant’s highly distinctive name and mark in order to misdirect users to third-party advertising or an unrelated third-party shop. Such “bait and switch” use will be to the clear detriment of the Complainant’s rights and cannot confer any legitimate interest on the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “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”.

It has been a consensus view in previous UDRP decisions that a respondent's default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

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

#### **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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the prefix "h") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Panels have held that the use of a domain name for illegal activity (here, claimed distributing malware) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed distributing malware) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Furthermore, considering the public presence of the Complainant and that the disputed domain name incorporates the KYNDRYL trademark entirely, only adding the prefix "h", it is unlikely that the Respondent had no knowledge of the KYNDRYL trademark. The disputed domain resolved to a variety of unrelated third-party websites apparently selected at random, including attempts to mislead Internet users into downloading malware and websites with PPC advertising. In light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract Internet users to its website or affect the commercial activities of the Complainant by creating a likelihood of confusion with the Complainant's trademark.

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 <hkndryl.net> be transferred to the Complainant.

*/Christian Gassauer-Fleissner/*  
**Christian Gassauer-Fleissner**  
Sole Panelist  
Date: January 31, 2024