

Decision for dispute CAC-UDRP-103871

Case number	CAC-UDRP-103871
Time of filing	2021-06-22 09:15:49
Domain names	Philips-helper.com , Phil-rem.com, Philips-ru.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	KONINKLIJKE PHILIPS N.V.
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Organization	Alexander Kleshchin
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations for the sign "PHILIPS" (the "PHILIPS trademark"):

- the International trademark PHILIPS with registration No.310459, registered on 16 March 1966 for goods in International Classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 28, 31 and 34 in numerous jurisdictions;
- the International trademark PHILIPS with registration No.991346, registered on 13 June 2008 for goods and services in International Classes 3, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 25, 28, 35, 36, 37, 38, 41, 42, 44 and 45 in numerous jurisdictions, including the Russian Federation, where the Respondents are located and where the services featured on the websites at the disputed domain names are offered; and
- the European Union trademark PHILIPS with registration No. 000205971, registered on 22 October 1999 for goods and services in International Classes 3, 6, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 25, 28, 35, 37, 38, 40, 41 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is the producer of a wide spectrum of products including consumer electronics, domestic appliances, security systems and semiconductors.

The Respondent Nikita Magomedov registered the disputed domain names <philips-aid.com> and <philips-assist.com> on 20 August 2020, and the disputed domain name <remont-philips.com> on 23 November 2020. The Respondent Alexander Kleshchin registered the disputed domain name <philips-helper.com> on 30 September 2020, the disputed domain name <philips-ru.com> on 11 December 2020, and the disputed domain name <phil-rem.com> on 16 December 2020.

The disputed domain names resolve to almost identical websites that offer repair services in respect of Philips-branded products and describe the entity that offers these services as an official service centre for such products.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain names are confusingly similar to the Complainant's distinctive and well-known PHILIPS trademark, because they incorporate this trademark in its entirety in combination with a descriptive or generic term either before or after the trademark, such as "helper", "aid", "assist", "rem", "ru" and "remont". There may be a greater risk of confusion where the additional words are descriptive of the wares or services with which the trademark is ordinarily used, because there is an increased chance that Internet users will believe the respective domain name resolves to a website that is owned by or affiliated with the trademark owner.

According to the Complainant, the disputed domain name <phil-rem.com> is also confusingly similar to the PHILIPS trademark, because it contains the dominant feature of this trademark combined with the element "rem", which is used as an acronym for "remont" - the Russian word for "repairs". The content of the website associated to this disputed domain name is identical to the websites associated to the five other disputed domain names, and the Respondents are passing itself off as an official service centre for the Complainant's products, which supports a conclusion that they chose this disputed domain name because they believed that it was confusingly similar to the PHILIPS trademark of the Complainant.

The Complainant submits that the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant states that it has never authorized the Respondents to use the PHILIPS trademark and the Respondents are not commonly known by the disputed domain names. The disputed domain names were registered between August and December 2020, which is many years after the Complainant started using the PHILIPS trademark, and have not been used for a bona fide offering of goods or services. Rather, the Respondents are using the disputed domain names to attract Internet users to their websites which falsely describe the Respondents as an official Philips service centre and contain no disclaimer. According to the Complainant, this is in breach of the requirements set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, because the websites do not accurately and prominently disclose the registrant's relationship with the trademark holder, which is the Complainant.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. It points out that the PHILIPS trademark is well known around the world, so the Respondents must have registered the disputed domain names with knowledge of that trademark and targeting it. The Respondents are trying to "corner the market" in domain names that reflect the PHILIPS trademark, registering 6 variations of domain names containing the PHILIPS trademark together with descriptive terms. The Complainant also submits that Respondents attempt to attract Internet users for

commercial gain to their own websites by exploiting the popularity of the Complainant's trademarks and misleading Internet users that the Respondents are an official repair centre for the Complainant's products. Further, the Respondents did not respond to the Complainant's takedown requests sent to the registrants of the disputed domain names, the respective webhosts and to the Registrars of the disputed domain names.

RESPONDENTS:

The Respondents did not submit a Response in this proceeding.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondents to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Consolidation of the disputes in respect of the disputed domain names

The Complainant requests consolidation of the disputes in respect of the disputed domain names into a single proceeding. It submits that although some of the disputed domain names show different registrant details in their respective Whois records, all disputed domain names are owned or under the effective control of a single person or entity, or a group of individuals acting in concert. In support of this statement, the Complainant points out that the disputed domain names resolve to substantially identical websites and all of them apart from one resolve to the same IP address, while the disputed domain name <remont-philips.com> resolves to a nearby IP address in the same netblock, assigned to the same organization, and that all of the disputed domain names have the same format, containing the well-known PHILIPS trademark and a generic term, separated by a hyphen.

None of the listed registrants of the disputed domain names has submitted a formal Response or objected to the consolidation request of the Complainant.

Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes, and paragraph 3(c) of the Rules provides that a Complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. As discussed in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), where a complaint is filed against multiple respondents, UDRP panels look at whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. UDRP panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in the content or layout of websites corresponding to the disputed domain names, any naming patterns in the disputed domain names, or other arguments made by the complainant.

The Panel is satisfied that the Complainant has shown good reasons why the consolidation of the Respondents and the disputes related to the disputed domain names in a single proceeding is justified and appropriate in the circumstances. The evidence in the case file shows that the websites associated to the disputed domain names are indeed almost identical in content and appearance and describe the entity whose services are offered on the websites as an official service centre for Philips appliances, without specifying its name and address. The registrant of <philips-aid.com>, <philips-assist.com> and <remont-philips.com> is Nikita Magomedov, while the registrant of <philips-helper.com>, <philips-ru.com> and <phil-rem.com> is Alexander Kleshchin. However, the telephone number specified on the website at <remont-philips.com> (whose registrant is Nikita Magomedov) is the same as the telephone number specified on the websites at <philips-helper.com>, <philips-ru.com> and <phil-rem.com> (whose registrant is Alexander Kleshchin). This is sufficient for the Panel to conclude that the disputed domain names are under common control.

None of the Respondents has advanced any reasons why it may not be equitable to allow the consolidation of the disputes. It appears that the consolidation would lead to greater procedural efficiency, and the Panel is not aware of any reasons why the consolidation would not be fair and equitable to all Parties.

Therefore, the Panel decides to allow the consolidation of the disputes in relation to all of the disputed domain names in the present proceeding.

Language of the proceeding

According to the information provided by the Registrar, the language of the Registration Agreements for the disputed domain names <philips-aid.com>, <philips-assist.com> and <remont-philips.com> is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests the language of this administrative proceeding to be English. It submits that the Respondent can understand this language, because the language of the registration agreement for three of the disputed domain names is English, and the disputed domain names <philips-aid.com> and <philips-assist.com> contain the English words “aid” and “assist”.

The Respondents have not objected to the Complainant’s request on the language of the proceeding and have not expressed any opinion on the issue. As noted by the Complainant, the language of the Registration Agreements the disputed domain names <philips-helper.com>, <philips-ru.com> and <phil-rem.com> is English, and as discussed above, it appears that all disputed domain names are under common control. Three of the disputed domain names contain English words such as “aid”, “assist” and “helper”. These circumstances support a conclusion that the person who controls all of the disputed domain names understands English and that the Respondent would not be disadvantaged if the language of the proceeding is English.

Neither of the Parties has brought forward any arguments that using the English language in this proceeding would not be fair and efficient.

In view of the above, and in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English. At the same time, the Panel will take into account the evidence in the case file that is in the Russian language.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of the disputed domain names:

(i) the domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondents have no rights or legitimate interests in respect of the disputed domain names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”.

In this proceeding, the Respondents have not used the opportunity provided to them under the Rules and have not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the PHILIPS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD sections of the disputed domain names.

Each of the disputed domain names reproduces the PHILIPS trademark in its entirety in combination with a descriptive or dictionary word. The disputed domain name <phil-rem.com> incorporates the dominant feature of the PHILIPS trademark in combination with the abbreviation “rem”, which as submitted by the Complainant refers to the Russian language word “remont” meaning “repairs”.

As discussed in section 1.7 of the WIPO Overview 3.0, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. An additional argument for the confusing similarity of the disputed domain name <phil-rem.com> with the PHILIPS is the fact that the website associated to it is identical to websites associated to the other disputed domain names, and as discussed below in this decision, all of these websites target the PHILIPS trademark. As discussed in section 1.7 of the WIPO Overview 3.0, where a panel would benefit from affirmation as to confusing similarity with the complainant’s mark, the broader case context such as website content trading off the complainant’s reputation, or a pattern of multiple respondent domain names targeting the complainant’s mark within the same proceeding, may support a finding of confusing similarity.

In view of the above, the Panel finds that the disputed domain names are confusingly similar to the PHILIPS trademark in which the Complainant has rights.

Rights and legitimate interests

While 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 often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondents have no rights or legitimate interests in the disputed domain names, because they have not been authorized to use the PHILIPS trademark and are not commonly known under the disputed domain names. The Complainant also points out that the disputed domain names resolve to almost identical websites offering repair services for Philips appliances and falsely describing the provider of these services as an official service centre for such products, without containing any disclaimer for the lack of relationship with the Complainant. Thus, the Complainant has established a prima facie case that the Respondents lack rights or legitimate interests in the disputed domain names.

The Respondents have not submitted a Response and have not provided an explanation of their actions related to the disputed domain names.

In the Panel's view, the circumstances of this case support the prima facie case made by the Complainant. The disputed domain names are confusingly similar to the PHILIPS trademark and the evidence in the case file shows that they indeed resolve to almost identical websites that offer what is described as "official" repair services for Philips products and contain no information about the identity of the provider of these services and no disclaimer for the lack of relationship with the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondents, being aware of the goodwill of the Complainant's well-known PHILIPS trademark, have registered the disputed domain names targeting this trademark in an attempt to exploit its goodwill by attracting Internet users and confusing them to believe that the disputed domain names offer the services of an entity that is affiliated to the Complainant.

Therefore, the Panel finds that the Respondents do not have rights or legitimate interests in the disputed domain names.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the well-known PHILIPS trademark predates the registration of the disputed domain name with several decades. The disputed domain names are confusingly similar to this trademark, which may lead Internet users to believe that they are affiliated to the Complainant. This risk of confusion is increased by the content of the associated websites which describe the provider of the services offered there as an official service centre for Philips products.

In the absence of an authorization by the Complainant for this and the lack of any plausible explanation of the actions of the registrants of the disputed domain names, the Panel accepts as more likely than not that the Respondents have registered the disputed domain names with knowledge of the Complainant's PHILIPS trademark and with the intention of taking

advantage of its goodwill to attract Internet users to the associated websites and to the services offered on these websites misleading them that these services have been authorized by the Complainant.

This satisfies the Panel that the disputed domain names have been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. PHILIPS-HELPER.COM : Transferred
2. PHILIPS-AID.COM: Transferred
3. PHIL-REM.COM: Transferred
4. PHILIPS-RU.COM: Transferred
5. PHILIPS-ASSIST.COM: Transferred
6. REMONT-PHILIPS.COM: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION 2021-08-02

Publish the Decision