

Decision for dispute CAC-UDRP-104965

Case number	CAC-UDRP-104965
Time of filing	2022-11-04 10:35:52
Domain names	philips-iraq.com, philipslumea.net

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Koninklijke Philips N.V.
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Complainant representative

Organization	Coöperatie SNB-REACT U.A.
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Respondents

Name	Saad Alkaysi
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Name	saad qasim
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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 (word mark) 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 (stylized capitalized font) 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; 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.

The Complainant is also the owner of the International Trademark registration for the sign "LUMEA":

- registration number 1033502, which has proceeded to registration as a European Union Trademark in class 8 for Electric and non-electric hair removing apparatus; electric hair removing apparatus based on pulse light and/or laser technology, also suitable to slow down, prevent or reduce hair regrowth.

FACTUAL BACKGROUND

The PHILIPS trademark is a well-known and famous brand, which is one of the most widely recognized identities in the world. The PHILIPS trademark is synonymous with a wide spectrum of products varying from consumer electronics to domestic appliances, from security systems to semiconductors.

As was held in CAC-UDRP-104326 <philips-orginal.com>, referencing CAC Case 103077 <PHILIPSPULSEOXIMETERS.COM> "There are no doubts that the Complainant's trademarks "PHILIPS" are well-known worldwide as confirmed by the previous panels (e.g. WIPO Case No. D2010-1494)."

The Complainant is also the owner of the International Trademark registration for the sign "LUMEA", with registration number 1033502, which has also proceeded to registration as a European Union Trademark. Such in class 8 for Electric an.

The Respondent registered <PhilipsLumea.net> on 2021-03-31, and <Philips-Iraq.com> on 2014-10-25. This is several decades after Complainant registered and commenced the use of its trademarks.

PARTIES CONTENTIONS

The Complainant claims that the disputed domain names are confusingly similar to the Complainant's well-known trademark PHILIPS. They incorporate entirely Complainant's trademarks.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names, because it has not been authorized to use the PHILIPS and LUMEA trademarks and is not commonly known under the disputed domain names.

Neither Philips or Lumea are generic terms or commonly used terms in Iraq.

The Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or 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 Respondent 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.

PRINCIPAL REASONS FOR THE DECISION

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(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.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Complaint has established rights in the names PHILIPS and LUMEA. The disputed domain names <PHILIPS-IRAQ.COM> and <PHILIPSLUMEA.NET> are found to be confusingly similar to the Complainant's Trademarks and company name. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

a) disregarding the top-level suffix in the domain names (i.e. ".com" and ".net"), and

b) finding

(1) that the addition of a generic or generally non-distinctive element such as geographical denominations to the protected trademark (in this case the name IRAQ as an indication of a country in which products may or may not be made available for sale by the Complainant) in the case of <PHILIPS-IRAQ.COM>, and

(2) that the simple combination and use of two marks owned by the same party (the Complainant) in the case of <PHILIPSLUMEA.NET>

would by no means be considered sufficient to distinguish a domain name from a trademark.

The disputed domain names are therefore confusingly similar to the earlier rights in the names PHILIPS and LUMEA.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain names. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Respondent has no rights or legitimate interests in the disputed domain names. It has not been authorized to use the PHILIPS or LUMEA trademarks and is not commonly known under the disputed domain names. Neither Philips nor Lumea are generic terms or commonly used terms in Iraq.

Given the well-known nature of the Philips trademarks and use of the Complainant's stylized PHILIPS marks in an identical font on Respondent's website <PHILIPS-IRAQ.COM>, it is more than likely that the Respondent, being aware of the goodwill of the Complainant's trademarks, registered the disputed domain names targeting these trademarks in an attempt to exploit its goodwill by attracting Internet users and confusing them to believe that the websites connected to the disputed domain names offer the services of an entity that is affiliated to the Complainant.

In the footer of the website connected to the disputed domain name, <PHILIPSLUMEA.NET>, the Respondent has placed a 'copyright notice' which falsely implies that it is the Complainant itself: "All rights reserved to Philips Lumea 2021". Such attempt at impersonation cannot confer rights and legitimate interests. On the website connected to <PhilipsLumea.net>, the Respondent has placed a section titled: "Verify Your Device is Original or not" with a button named 'Check now'. This takes one to different websites purporting to instruct consumers to: "Verify that the device is original or fake by entering the device's serial number".

This is conduct similar to that of the Respondent in CAC Case 104326 <PHILIPS-ORGINAL.COM>. As in that case, the Respondent's website connected to the disputed domain name is attempting to pass itself off as an official website allowing consumers to verify the authenticity of PHILIPS (Lumea) products by inputting the serial number details into a webform. The Respondent has copied Complainant's PHILIPS Lumea website, including its purple color scheme and product images and has reproduced the Complainant's trademarks prominently at the top of its site. The Respondent chose the confusing domain name <PHILIPSLUMEA.NET> which contains two of the Complainant's registered trademarks and is clearly seeking to impersonate the Complainant.

The Respondent's aim appears to be harvesting information ('phishing' for information) regarding their authentic PHILIPS products, such as serial numbers. Such details could potentially be used by Respondent for several purposes, the most obvious would be to create illegal replica products or certificates (counterfeit activity), or misuse of factory warranty policies, both of which can never confer rights or legitimate interests on a Respondent. The disputed domain name is likely used to obtain information on the consumer's authentic PHILIPS products such as serial numbers, and most likely this information will be used to create counterfeits thereof or misuse factory warranty policies.

On the website connected to the disputed domain name <PHILIPS-IRAQ.COM>, the Respondent passes itself off as the "Phillips Lumia Authorized Agent in Iraq" and the "Phillips Lumia Authorized Agent in Middle East", in the header. Both are false statements. The incorrect reproduction of the LUMEA trademark by spelling it 'LUMIA' further illustrates the unauthorized nature of the website. On the main page connected to the disputed domain name, users are again invited to enter their serial number.

In summary, the Panel concludes that the Respondent did not establish any rights or legitimate interest in the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain names were registered by the Respondent and are being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain names in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The Respondent is also in no way commonly known under the disputed domain names. This prima facie evidence was not challenged by the Respondent.

The Complainant's trademark "PHILIPS" is distinctive and well known all around the world. The trademark "LUMEA" is also distinctive. The fact that the Respondent has registered domain names that are confusingly similar to the earlier rights indicates that the Respondent had knowledge of the Complainant's trademarks at the time of registration of the disputed domain names. No other reason for registering a combination of two of the trademarks belonging to the Complainant appears even remotely feasible. Any, even the most basic Google search in respect of the wording "PHILIPS" or "LUMEA" and especially the combination of the two would have yielded obvious references to the Complainant.

The disputed domain names are not used for any bona fide offerings. Instead, by using the domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web sites, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of his web sites. The domain names are connected to websites replicating the names and layout and design of the official website of the Complainant. Therefore, Internet users, while searching for information on the Complainant's goods, are confusingly and purposefully led to the Respondent's websites where they are instructed to enter data for the purposes of phishing.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the complainant's mark. The Respondent, through the use of misleading information on its websites, and copying the color scheme and product images of the Complainant's official Lumea websites, is passing itself off as the authorized distributor of PHILIPS Lumea products in Iraq, which it is not.

Other factors indicating bad faith include the Respondent's lack of response to the Complainant's representative's infringement notices (over thirty in the case of <PHILIPS-IRAQ.COM> which have been submitted to the Respondent's webhost (eukhost.com) and the Registrars in question. However, no response was received. All of this leads to the conclusion that the Respondent is not engaged in legitimate sales activity, but is rather more likely to use the connected websites to harvest Internet users their data such as the serial numbers, for the purposes discussed above.

The Panel is convinced that the disputed domain names were registered in full awareness of the Complainant's earlier rights and are being used for phishing purposes. The Panel therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. philips-iraq.com: Transferred
2. philiplumea.net: Transferred

PANELLISTS

Name	Udo Pflighar B.A. (Melb.)
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DATE OF PANEL DECISION 2022-12-15

Publish the Decision
