

Decision for dispute CAC-UDRP-105670

Case number	CAC-UDRP-105670
-------------	------------------------

Time of filing	2023-08-01 09:46:49
----------------	----------------------------

Domain names	PhilipsLumea.com
--------------	-------------------------

Case administrator

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

Complainant

Organization	Koninklijke Philips N.V.
--------------	---------------------------------

Complainant representative

Organization	Coöperatie SNB-REACT U.A.
--------------	----------------------------------

Respondent

Name	Saleh Hassouna
------	-----------------------

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, proprietor of the International registration 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 as well as for "LUMEA", with registration number 1033502, which is extended to the European Union, applied for and registered at 1 March 2010.

FACTUAL BACKGROUND

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

The Complainant is a Dutch company specializing inter alia in consumer products and active around the world. It belongs to the 100 Best Global brands.

The disputed domain name was registered on 27 June 2017 and resolved to a page showing the Philips Lumea device LOGO of the

Complainant with the additional word combination „Lumea Experts“ under <shop.philipslumea.com> instead of „Philips“ what is used by the Complainant in connection with the logo. Under the disputed domain name, a webshop was available.

Complainant approached Respondent by e-mail. Respondent replied attaching a document that they are a US company, Philips Lumea Experts LLC, from Wyoming and would mention on their website that they are not related to the Complainant. The document indicated that the company was founded in 2020. Complainant showed internet searches from the Internet that this company was dissolved in August 2022. The website showed under „About us“ the indication „We are not connected or related to Philips Company in any way, shape, or form“. The disputed domain is today linked to <https://dokanjamalk.com/>. A relation between the Respondent and the dissolved company Philipp Lumea Experts LLC is not shown or otherwise available. The Respondent asked for an extension to file a response, but then did not file a response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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 name (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 name has been registered and is 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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (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 with respect to 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

The Complainant has established the fact that it has valid trademark rights for „Philips“ and „Lumea“ in several countries.

The disputed domain name is confusingly similar to each the Philips and Lumea mark of the Complainant since the disputed domain name comprises both marks in an identical way.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark „Philips“, and also to the trademark „Lumea“ in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the disputed domain name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the disputed domain name since there is no indication that the Respondent is commonly known by the name "PhilipsLumea" nor that the Respondent is using the disputed domain name in connection with a bona fide offering of related goods or services.

The latter could be discussed since Respondent seems to have offered products from the Complainant. However, the majority opinion of panelists follows in cases where a legitimate interest of resellers of original goods to use a trademark in the domain name is in question, the test of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No.D2001-0903, <okidataparts.com> after which such use might be legitimate if the use comprise the actual offering of goods, only the trademarked goods are sold on the site, and the site is accurately and prominently disclosing the registrant's relationship with the trademark holder.

Although this panel follows even the argumentation that any reseller is not allowed to use the trademark, unless otherwise authorized, in a manner which goes beyond the scope of informing the customer about the core of its business activities (see also *Ferrero S.p.A. v. Fistagi S.r.l.*, WIPO Case No. D2001-0262; *Raymond Weil SA v. Watchesplanet (M) Sdn Bhd*, WIPO Case No. D2001-0601; dissenting opinion in *DaimlerChrysler A.G. v. Donald Drummonds*, WIPO Case No. D2001-0160) and unless it is not clear for the customer that the retailer is not an authorized partner of the Trademark owner, the present case does not meet even the less strong criteria of the test after *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No.D2001-0903, <okidataparts.com>, since the website under the disputed domain name creates the impression of being authorized by the Complainant or even the Complainant himself whereas the indication under „ABOUT US“ is not disclosing the Respondents relationship in a prominent way.

The Panel therefore finds that the respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Due to the long existence of Complainant's marks being well known (see as an example CAC-UDRP-104326 <philips-orginal.com> for many others), the Respondent must have been well aware of the Complainant and its trademarks when registering the domain name. The Complainant had not authorised the Respondent to make use of its mark. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant's authorization.

The circumstances of this case furthermore indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to a potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such potential website or location, or of a product or service on such website or location.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

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 be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PhilipsLumea.com**: Transferred

PANELLISTS

Name	Dietrich Beier
------	-----------------------

DATE OF PANEL DECISION 2023-09-18

Publish the Decision
