

## Decision for dispute CAC-UDRP-107255

Case number **CAC-UDRP-107255**

Time of filing **2025-01-30 14:06:25**

Domain names **philips-ukraine.com**

### Case administrator

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

### Complainant

Organization **Koninklijke Philips N.V.**

### Complainant representative

Organization **Murielle Dupont (Coöperatie SNB-REACT U.A.)**

### Respondent

Organization **Дмитрий Гасило (ТОВАРИСТВО З ОБМЕЖЕНОЮ ВІДПОВІДАЛЬНІСТЮ "ТЕХНО-ЛАЙТ")**

#### 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 the owner of the well-known trademark PHILIPS, which is the subject of numerous trademark registrations around the world, including the following:

- International trademark registration No. 310459 for PHILIPS registered on March 16, 1966, for goods and services of classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 28, 31 and 34;
- International trademark registration No. 991346 for PHILIPS (figurative mark) registered on June 13, 2008, for goods and services of classes 3, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 25, 28, 35, 36, 37, 38, 41, 42, 44, 45, designated for Ukraine;
- Ukrainian trademark registration No. 2632 (figurative mark) registered on November 30, 1993, for goods of classes 07, 08, 09, 10 and 11.

#### FACTUAL BACKGROUND

The Complainant is a Dutch company operating in the electronics industry. It is the owner of multiple PHILIPS word and figurative trademarks and has held exclusive rights to these trademarks since at least 1966.

The disputed domain name was registered on January 12, 2024, and resolves to a website offering electric appliances for sale while referencing the PHILIPS trademarks.

The Complainant sent a cease-and-desist letter to the Respondent, demanding the transfer of the disputed domain name and the cessation of the infringement. However, the Respondent did not respond to the letter.

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#### PARTIES CONTENTIONS

##### **The Complainant**

The Complainant asserts that all the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. Specifically, the Complainant contends the following:

- The disputed domain name is confusingly similar to the Complainant's PHILIPS mark as it incorporates the trademark in its entirety. Aside from the "PHILIPS" trademark, the Respondent has added the country name – Ukraine – to the disputed domain name. The addition of such geographical terms cannot prevent a finding of confusing similarity under the first element, as the relevant PHILIPS trademark is fully recognizable within the disputed domain name.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. The Complainant has not authorized the Respondent to use its mark, and there is no relationship or license between the Complainant and the Respondent. The Respondent has not used it in connection with a bona fide offering of goods or services.
- The disputed domain name was registered and is being used in bad faith. The Complainant has been the rightsowner of the "PHILIPS" trademark since at least 1966. The disputed domain name has been registered after that date. The disputed domain name was registered in bad faith, knowing the Complainant mark when registering the disputed domain name, and targeting its trademarks. The Respondent did not answer the cease-and-desist letter sent by the Complainant. The Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trademark. The Respondent is obtaining commercial gain from its use of the disputed domain name and the resolving website.

The Complainant requires the disputed domain name to be transferred.

##### **The Respondent**

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

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#### 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).

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#### 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).

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#### 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).

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#### 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.

##### **Procedural Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Ukrainian.

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the

registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the following:

- the disputed domain name is in Latin characters and not in Cyrillic characters;
- the disputed domain includes English-language trademark and the English word for the country Ukraine;
- the website content is available in English;
- the disputed domain is registered in the international .com zone.

The Respondent did not make any submissions with respect to the language of the proceeding. In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs.

The Panel also reviewed previous correspondence with the Respondent, particularly the cease-and-desist letter, which was sent in both English and Ukrainian. The Panel believes that, in this specific case, requiring the Complainant to translate the Complaint and annexes would impose unfair additional expenses on the Complainant and unnecessarily delay this UDRP proceeding (See *Navasard Limited v. Dmitrii Sofronov*, CAC Case CAC-UDRP-106484). Moreover, the Respondent did not file any suggestions or objections regarding the language of this proceeding and also replied to the Complainant's English cease-and-desist letter in English, demonstrating his knowledge of the language.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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#### PRINCIPAL REASONS FOR THE DECISION

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

- 1) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark in which the Complainant has rights;
- 2) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 3) that the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

#### **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.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has shown rights in respect of its PHILIPS 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. The addition of the geographic term bears no distinctive character and is certainly not able to reduce the confusing similarity of the disputed domain name with the Complainant's trademark. WIPO Overview 3.0, section 1.8. . On the contrary, the full inclusion of the Complainant's trademark in combination with the geographic term "Ukraine" enhances the false impression that the disputed domain name is somehow officially related to the Complainant and its products and services offered in Ukraine.

The Panel further notes that the gTLD ".com" is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant's mark to the disputed domain name. WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

#### **Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is well established that, as it is put in WIPO Overview 3.0, section 2.1, while the overall burden of proof in the proceedings is on the

complainant, 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. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a prima facie case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name, notably by demonstrating rights in the PHILIPS trademark, which precede the Respondent’s registration of the disputed domain name for years, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant’s PHILIPS trademark or any domain names incorporating the PHILIPS trademark.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant’s mark, and taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel concludes that the Respondent has no rights or legitimate interests related to the disputed domain name.

Although the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name, the Panel must assess the evidence provided by the Complainant to determine whether the Complainant has established that the Respondent does not possess any rights or legitimate interests in the disputed domain name.

The case file provides no indication of any legitimate or bona fide use of the disputed domain name that could establish the Respondent’s rights or interests in it. What is more, the case file clearly shows that the Respondent has registered and used the disputed domain name for the purpose of passing itself off as being (connected with) the Complainant by prominently featuring the Complainant’s “PHILIPS” figurative trademark at the top of every page on its website, in connection with the sale of electronic equipment and household appliances.

A common misunderstanding among (authorized and unauthorized) resellers is the belief that they are free to register domain names incorporating the trademark of the products they offer services for. In the present case, the Respondent is not an authorized reseller. In this regard, the Panel draws the Respondent’s attention to the fact that, even if the products sold by the Respondent are genuine, the use of the disputed domain name does not meet the requirements established by the *Oki Data* test, at least because the website to which the disputed domain name resolves did not accurately and prominently disclose the lack of relationship between the Respondent and the Complainant (*WIPO Overview 3.0*, section 2.8). Moreover, the composition of the disputed domain name carries a risk of implied affiliation with the Complainant, which also prevents a finding of rights or legitimate interests (*WIPO Overview 3.0*, section 2.5.1).

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, and that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant’s mark, taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel found that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With the evidence on file, the Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### **Registered or 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.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. *WIPO Overview 3.0*, section 4.2.

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.

In the present case, the Panel notes that the Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its PHILIPS trademark. Given that the Complainant’s trademark has been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its PHILIPS mark prior to the registration of the disputed domain name.

Furthermore, the Panel is also of the view that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent’s website in terms of paragraph 4(b)(iv) of the Policy. This false impression is increased by the incorporation of the Complainant’s “PHILIPS” trademark in the disputed domain name, the goods (electric appliances) being offered on the website corresponding to the disputed domain name and the unauthorized featuring of the Complainant’s PHILIPS trademark in a prominent manner on the website related to the disputed domain name.

In addition, the disputed domain name displays the Complainant’s PHILIPS trademark and contains the following features: text at the footer of the home page “Philips branded online store”, followed by a story of the Philips brand and a description of the Complainant activities; an “About Philips” section that contains the detailed history of the brand, without mentioning that the Respondent is not

related to the Complainant; an "About Store" section that displays the text "certified Philips online store". This clearly demonstrates bad faith as a reasonable person who visited the Respondent's website was likely to be misled in relation to the source, sponsorship, affiliation, or endorsement of the website and the products purportedly made available for online sale on the website.

Finally, the fact that the Respondent did not answer the cease and desist letter sent by the Complainant, is an additional evidence of bad faith. As it was decided by the Panel in *Riemann Trading ApS v BUI QUANG PHUONG*, CAC-UDRP-101403 : "it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark PERSPIREX when registering the Disputed domain name. If the Respondent had legitimate purposes in registering and using the Disputed domain name it would have responded to the Complainant's "cease and desist" letter".

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and is being used in bad faith. In light of the above, the third element under paragraph 4(a)(iii) of the Policy has been established.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **philips-ukraine.com**: Transferred

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## PANELLISTS

Name	<b>Ganna Prokhorova</b>
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DATE OF PANEL DECISION	2025-03-09
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Publish the Decision

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