

Decision for dispute CAC-UDRP-104040

Case number	CAC-UDRP-104040
-------------	------------------------

Time of filing	2022-01-25 09:31:03
----------------	----------------------------

Domain names	servis-philips.com, rem-phil.com , philips-servise.com , saeco-servise.com , servis-sc.com , saeko-remont.com
--------------	--

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	--

Complainant

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

Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
--------------	---

Respondent

Name	Alexander Kleshchin
------	----------------------------

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 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; 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 the owner of the following trademark registrations for the sign "SAECO" (the "SAECO trademark"):

- The International trademark SAECO with registration No. 576295A, registered on 12 April 1991 for goods in International Classes 7, 9, 11 and 21;
- The European Union trademark SAECO with registration No. 008278236, registered on 24 December 2009 for services in International Classes 35, 36, 37, 41 and 43; and

- The European Union trademark SAECO with registration No. 3962313, registered on 19 October 2005 for goods in International Classes 7, 9 and 11.

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 name <servis-saeco.com> on 13 July 2020 and the disputed domain name <saeko-support.com> on 18 December 2020.

The Respondent Alexander Kleshchin registered the disputed domain name <saeko-remont.com> on 22 August 2020, the disputed domain name <servis-sc.com> on 30 September 2020, the disputed domain names <philips-servise.com> and <saeco-servise.com> on 21 December 2020, and the disputed domain name <servis-philips.com> and <rem-phil.com> on 30 June 2021.

The disputed domain names resolve to very similar websites that offer repair services in respect of Philips-branded products and describe the entities that offer these services as official service centres 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 and SAECO trademarks, because they incorporate one of these two trademarks in its entirety in combination with a descriptive or generic term either before or after the trademark, such as "support", "remont" (the Russian word for "repairs"), and "servis" (the Russian word for "service"), the addition of which does not eliminate the confusing similarity with the Complainant's trademarks. 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 names <saeko-remont.com> and <saeko-support.com> are also confusingly similar to the SAECO trademark, as they consist of a misspelling of this trademark, merely changing the letter "c" into a "k", which is a common, obvious, or intentional misspelling.

The Complainant further states that the disputed domain names <servis-sc.com> and <rem-phil.com> are also confusingly similar to the Complainant's trademarks. The Complainant notes that the word "rem" is used as an acronym for "remont" - the Russian word for "repairs". According to the Complainant, an additional argument in support of the confusing similarity of these disputed domain names and the Complainant's trademarks is that the content of the websites associated to these disputed domain names is identical to the websites associated to the other disputed domain names, all of which target the Complainant's trademarks, which supports a conclusion that the Respondents chose these disputed domain names because they believed that they were confusingly similar to the trademarks of the Complainant. The Complainant adds that the website at the disputed domain name <rem-phil.com> is the same as the website at the disputed domain name <servis-philips.com>, both hosted on the same IP address, while the two disputed domain names were registered on the same day - 30 June 2021. As to the disputed domain name <servis-sc.com>, the Complainant notes that it is hosted on the same IP address as the disputed domain name <servis-saeco.com>, and the website at the disputed domain name <servis-sc.com> displays at the top the full visual trademark and logo of the Complainant.

According to the Complainant, the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant submits that it has never authorized the Respondents to use the PHILIPS and SAECO trademarks, the disputed domain names were registered many years after the registration of these trademarks, and they 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 them as official service centres of the Complainant for its PHILIPS and SAECO products and contain no disclaimer for the lack of relationship with the Complainant. According to the Complainant, the Respondents' conduct is in breach of the requirements set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, because their websites do not accurately and prominently disclose their relationship with the Complainant, and the Respondents try to "corner the market" in domain names that reflect the PHILIPS and SAECO trademarks by registering 8 variations of domain names containing these trademarks together with descriptive terms.

The Complainant further states that the Respondents are not commonly known by the disputed domain names.

According to the Complainant, the Respondents do not fulfill the conditions of the "Oki Data" exception, as the registration and use of the disputed domain names for websites that falsely describe themselves as PHILIPS official service centers is an attempt to exploit the fame and goodwill of Complainant's trademarks by diverting Internet traffic intended for 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 and SAECO trademarks, registering 8 variations of domain names containing these two trademarks together with descriptive terms, which constitutes a pattern of conduct of preventing the trademark holder from reflecting its mark in a domain name.

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 official service centres for the Complainant's products. The Complainant notes that the PHILIPS trademark was registered in 1966, and the SAECO trademarks was registered in 1991, so the Respondent must have had actual knowledge of these trademarks when registering the disputed domain names, and targeted them, which is evident from the fact that the Respondents are offering services similar to those of the Complainant under the Complainant's trademarks. This carries a risk of implied affiliation with the Complainant, considering the close competitive proximity of the services for repair of the Complainant's goods. The use of the word "official" service center on several of the Respondents' websites is also misleading and confuses consumers.

Finally, the Complainant notes that 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.

RESPONDENT:

The Respondents did not submit Responses in this proceeding.

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

1. 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 all disputed domain names are owned or under the effective control of a single person. In support of this statement, the Complainant points out that the disputed domain name <saeko-remont.com>, which is registered to the Respondent Alexander Kleshchin is hosted on the same IP address as the disputed domain name <saeko-support.com> which is registered to the other Respondent Nikita Magomedov, while the disputed domain name <servis-saeco.com>, registered to the Respondent Nikita Magomedov, is hosted on the same IP address as the disputed domain name <servis-sc.com>, registered to the first Respondent Alexander Kleshchin. The Complainant also notes that the disputed domain names <servis-philips.com> and <rem-phil.com> are hosted in the same subnet and belong to the Respondent Alexander Kleshchin. The Complainant further states that all disputed domain names incorporate the Complainant's well-known PHILIPS and SAECO trademarks and use the same format, containing a trademark and a generic term separated by a hyphen, and 6 out of the 8 disputed domain names are registered with the same Registrar and use the same combination of nameservers. According to the Complainant, the disputed domain names resolve to similar websites and describe the entities whose services are offered on the websites as official service centres for Philips appliances, without specifying their names and addresses, but only containing Russian phone numbers in their top right corners.

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. As noted by the Complainant, some of the disputed domain names are registered to one of the Respondent, but share the same IP address, subnet or nameservers as other of the disputed domain names that are registered to the other Respondent. The evidence in the case file shows that the websites associated to the disputed domain names are indeed similar in content and appearance and describe the entity whose services are offered on the respective website as an official service centre for Philips appliances, without specifying its name and address. 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.

2. Language of the proceeding

According to the information provided by the Registrars, the language of the Registration Agreements for two of the disputed domain names 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 the other six of the disputed domain names is English, and all of the disputed domain names are under common control of a person who understands English. The Complainant also submits that ordering it to translate the Complaint in Russian would lead to unfairness and unwarranted delay of the proceeding.

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 discussed above, the language of the Registration Agreements of six of the disputed domain names is English, and it appears that all disputed domain names are under common control. These circumstances support a conclusion that the person who controls all of the disputed domain names understands English and that the Respondents 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 any evidence in the case file that is in the Russian language.

The Panel is therefore 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

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 substantive Responses 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 and SAECO trademarks.

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.

The disputed domain names <servis-philips.com> and <philips-servise.com> reproduce the PHILIPS trademark in its entirety in combination with a Latin transcription of the Russian language word for “service”. The disputed domain name <rem-phil.com> incorporates the dominant feature of the PHILIPS trademark in combination with the abbreviation “rem”, which refers to the Russian language word “remont” meaning “repairs”.

The disputed domain names <saeco-servise.com> and <servis-saeco.com> reproduce the SAECO trademark in its entirety in combination with a Latin transcription of the Russian language word for “service”. The disputed domain names <saeko-support.com> and <saeko-remont.com> reproduce the SAECO trademark with a spelling mistake in combination with a dictionary word or with the Russian language word “remont” meaning “repairs”. The disputed domain name <servis-sc.com> incorporates the consonants of the SAECO trademark.

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 <rem-phil.com> with the PHILIPS trademark, and of the disputed domain name <servis-sc.com> is the fact that the websites associated to them are identical or very similar to websites associated to the other disputed domain names, and as discussed below in this decision, all of these websites target the PHILIPS or the SAECO trademarks. 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 <servis-philips.com>, <philips-servise.com> and <rem-phil.com> are confusingly similar to the PHILIPS trademark in which the Complainant has rights. For the same reasons, the Panel finds that the disputed domain names <saeco-servise.com>, <servis-saeco.com>, <saeko-support.com>, <saeko-remont.com> and <servis-sc.com> are confusingly similar to the SAECO 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 and SAECO trademarks and are not commonly known under the disputed domain names. The Complainant also points out that the disputed domain names resolve to very similar websites offering repair services for Philips appliances and falsely describing the providers of these services as official service centres 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 Responses 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 and SAECO trademarks and the evidence in the case file shows that they indeed resolve to similar websites that offer what is described as “official” repair services for Philips products and contain no information about the identity of the providers 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 Panel accepts that the Respondents’ conduct does

not meet the requirements set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, because their websites do not accurately and prominently disclose their relationship with the Complainant, and the Respondents try to corner the market in domain names that reflect the PHILIPS and SAECO trademarks by registering 8 variations of domain names containing these trademarks together with descriptive terms.

The above also 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 PHILIPS and SAECO trademarks, 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 PHILIPS and SAECO trademarks predates the registration of the disputed domain name with several decades. The disputed domain names are confusingly similar to these trademarks, 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 providers of the services offered there as official service centres 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 and SAECO trademarks and with the intention of taking advantage of their 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.

Also, the conduct of the Respondents supports a conclusion that they have attempted to corner the market in domain names that reflect the PHILIPS and SAECO trademarks by registering 8 variations of domain names containing these trademarks together with descriptive terms, which also supports a finding of bad faith on the part of the Respondents.

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. **SERVIS-PHILIPS.COM**: Transferred
2. **SAEKO-SUPPORT.COM**: Transferred
3. **REM-PHIL.COM** : Transferred

4. **PHILIPS-SERVISE.COM** : Transferred
5. **SAECO-SERVISE.COM** : Transferred
6. **SERVIS-SC.COM** : Transferred
7. **SAEKO-REMONT.COM**: Transferred
8. **SERVIS-SAEKO.COM**: Transferred

PANELLISTS

Name	Assen Alexiev
------	----------------------

DATE OF PANEL DECISION	2022-03-11
------------------------	------------

Publish the Decision
