

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Turgay Sevimli
Case No. D2023-3945

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by D.M. Kisch Inc., South Africa.

The Respondent is Turgay Sevimli, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqmagazasi.com> is registered with Isimtescil Bilisim A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 21, 2023. On September 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 2, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 5, 2023.

On October 2, 2023, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On October 5, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint in both Turkish and English, and the proceedings commenced on October 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 7, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on November 9, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the Philip Morris International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located. According to the Complaint, the Complainant is, among others, the registered owner of the International Trademark Registration No. 1218246 (registered on July 10, 2014) for IQOS covering trademark protection also in Türkiye, *inter alia*, for electronic cigarettes as covered in classes 9, 11 and 34 (Annex 6 to the Complaint). The Complainant is also the registered owner of the United Arab Emirates Trademark registration No. 322648 for IQ, registered on April 27, 2020.

The disputed domain name was registered on June 5, 2023.

The screenshots, as provided by the Complainant, show that the disputed domain name was linked to a website in the Turkish language, which is used for offering various kinds of IQOS smoke-free products and further competing third-party products (Annex 8 to the Complaint). On the website at the disputed domain name, the Respondent prominently used the IQOS and other trademarks of the Complainant as well as various original product images of the Complainant.

According to Annexes 9 and 10 to the Complaint, the website initially associated to the disputed domain name was virtually identical (at least highly similar) to a website linked to another domain name, which was already subject to previous WIPO UDRP proceedings, where the panel decided to transfer that domain name to the Complainant. See, *Philip Moris Produts S.A. v. Mert Yazici*, WIPO Case No. [D2023-2415](#).

At the time of the decision, the disputed domain name redirects users to another, again virtually identical website at another domain name, which is highly similar to the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Turkish. 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 fact that the Respondent appears to be capable of reading and understanding the English language while the Complainant as a Swiss entity has no knowledge of Turkish.

The Respondent did not make any submissions with respect to the language of the proceeding, even though communicated in Turkish and in English.

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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

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.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. 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. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the IQOS and IQ trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the IQ trademark is recognizable within the disputed domain name. Moreover, section 1.7 of [WIPO Overview 3.0](#) states that "panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant". Here, the Panel notes that the disputed domain name (1) begins with the letters "i" and "q" (which are identical to the first two letters of the

Complainant's IQOS trademark and identical to the Complainant's IQ mark) and (2) resolves to a website prominently featuring the Complainant's products and its IQOS trademark (Annex 8 to the Complaint). Also, the Panel is convinced that the Respondent must have registered the disputed domain name because it believed that it is confusingly similar to the Complainant's IQOS trademark.

Accordingly, the Panel concludes that the disputed domain name is confusing similar to the IQOS and IQ marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here an apparent misspelling of "magazasi" (which is Turkish and means "store" in the English language) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the IQOS mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In this regard, the Panel particularly believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Okı Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Okı Data*") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Okı Data* are apparently not fulfilled in the present case. The Panel notes that the Respondent offers not only products of the Complainant but also competing third party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and/or authorized reseller/distributor for the Complainant's products in Türkiye. In view of the Panel, all this takes the Respondent out of the *Okı Data* safe harbour for purposes of the second element.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and 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.

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 Respondent must have had the Complainant and its IQ and IQOS trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users searching for the Complainant and its products.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent used the disputed domain name in order to generate traffic to its own website by deliberately misleading third parties in a false belief that the associated website is either operated or at least authorized by the Complainant.

This assessment of bad faith registration and use is reinforced by the Respondent's meanwhile redirection of the disputed domain name to another domain name (which is highly similar to the disputed domain name) and linked to a website which is more or less identical to the previous one. Furthermore, the Panel notes that also the initial website associated to the disputed domain name was virtually identical to a website linked to another similar domain name, which was already subject to WIPO UDRP proceedings and where the Panel decided to transfer that domain name to the Complainant (Annexes 8, 9 and 10 to the Complaint). In view of the Panel, all this further indicates an illegitimate pattern of domain name registrations and use, and the Respondent's ongoing efforts to circumvent UDRP decision by continuously applying for confusingly similar domain names with the purpose of generating traffic to its website.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

Consequently, the Panel is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

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 <iqmagazasii.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: November 23, 2023