

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Levent Unal
Case No. D2024-0678

1. The Parties

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

The Respondent is Levent Unal, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqosterea-tr.com> is registered with ODTÜ Geliştirme Vakfı Bilgi Teknolojileri Sanayi Ve Ticaret Anonim Şirketi (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 14, 2024. On February 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2024, 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 the same day, 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 March 4, 2024.

On February 28, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On March 4, 2024, 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 both in English and in Turkish, and the proceedings commenced on March 11, 2024.

In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response within the due date. Accordingly, the Center notified the Respondent's default on April 2, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on April 5, 2024. 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.

Upon an email communication from the Respondent to the Center on April 8, 2024, the Panel issued a Procedural Order No. 1 on April 9, 2024 by which the Complainant was invited to submit a request for settlement, in case the Complainant wished to pursue settlement negotiations. Such settlement request was submitted by the Complainant on April 11, 2024. Accordingly, the Center suspended the administrative proceeding until May 12, 2024. However, on April 23, 2024, the Complainant requested the administrative proceeding to be reinstated as the Parties have been unable to reach a settlement. Accordingly, the Center reinstated the proceeding on April 23, 2024.

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 a large number of word and figurative TERE and IQOS trademark registrations around the globe. According to the Complaint, the Complainant is, among many others, the registered owner of the Turkish designation of the International Trademark Registration No. 1218246, registered on July 10, 2014, for IQOS. The Complainant is further the registered owner of the Turkish Trademark Registration No. 2019 128867, registered on September 17, 2020, for TERE. Both trademark registrations provide protection, inter alia, for electronic cigarettes as protected in class 34 (Annexes 6 and 7 to the Complaint).

The Respondent is reportedly located in Türkiye.

The disputed domain name <iqosterea-tr.com> was registered on January 22, 2024.

Screenshots, as provided by the Complainant, show that the disputed domain name is associated to a website, which is used for purportedly offering various kinds of smoke-free products of the Complainant. On the associated website, the IQOS, TERE and other trademarks (including logos) as well as official product images of the Complainant are prominently used without a visible disclaimer describing the (lack of) relationship between the Parties.

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. The Center only received informal email communications from the Respondent on April 8 and 9, 2024 in English and Turkish language, stating mainly the following:

“I’m very, very sorry. I bought this domain for him on my own behalf at the request of a friend. I made an unintentional mistake because I didn’t know if this could be a problem or not. I’m so sorry. I will cancel or transfer according to the request of the complainant.”

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 Complainant has no knowledge of Turkish and that requested translation would be time and costs intensive.

The Respondent did not make any specific submissions with respect to the language of the proceeding, even though communicated by the Center in Turkish and English. In addition, the Respondent’s email communications to the Center on April 8 and 9, 2024 were drafted in Turkish and English language, which indicates that the Respondent has knowledge of 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 believes that the Respondent will not be prejudiced by a decision being rendered in English, and 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. [WIPO Overview 3.0](#), section 4.3.

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.

The Complainant has shown rights in respect of the IQOS and TEREА trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the IQOS and TEREА marks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other signs and terms, here “-tr” may bear on assessment of the second and third elements, the Panel finds such addition does not prevent a finding of confusing similarity between the disputed domain name and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 the 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. Quite the contrary, the Respondent clearly indicated in his email communication to the Center on April 8, 2024 that he admits to having made a mistake and is willing to transfer the disputed domain name to the Complainant, which in view of the Panel indicates that even the Respondent finds not to have any legitimate rights or interests in the disputed domain name.

Just for the sake of completeness, the Panel believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Okі Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“*Okі Data*”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Okі Data* are apparently not fulfilled in the present case. The Panel notes that the website which is 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. This assessment is further supported by the nature of the disputed

domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

In view of the Panel, all this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

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 IQOS and TEREА trademarks in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant's trademarks in their entirety, 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 uses 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 respectively redirected website is either operated or at least authorized by the Complainant. The prominent use of the Complainant's IQOS and TEREА marks including further trademarks, logos and official product pictures of the Complainant, and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant and its IQOS and TEREА trademarks as to the source, sponsorship, affiliation or endorsement of the associated respectively redirected website.

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

The Panel finds that the Complainant has established the third element of the Policy.

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, <iqosterea-tr.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: April 29, 2024