

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Dsfdsfdf, Dsfadsfdf  
Case No. D2022-0682

### **1. The Parties**

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

The Respondent is Dsfdsfdf, Dsfadsfdf /Turkey.

### **2. The Domain Names and Registrar**

The disputed domain names <buhariqostrend.com> and <primeiqos.com> are registered with Wix.com Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2022. On February 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 4, 2022, 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 in English on March 8, 2022.

The Center sent an email communication in English and Turkish to the parties on March 4, 2022, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain names is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on March 8, 2022. The Respondent did not comment on the language of the proceeding.

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, and the proceedings commenced on March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2022.

The Center appointed Dilek Ustun Ekdial as the sole panelist in this matter on April 11, 2022. 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 Philip Morris Products S.A. is a company, which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI"). PMI is the leading international tobacco company, with products sold in approximately 180 countries. PMI's unequalled brand portfolio contains brands like MARLBORO, one of the most selling cigarette brands since 1972.

PMI is known for innovating across its brand portfolio. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs", which PMI defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), PMI has developed a number of RRP products. One of these RRP products developed and sold by PMI is a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System").

For its new innovative smoke-free products the Complainant owns a large portfolio of well-known trademarks.

The Complainant is the registered owner of the IQOS trademarks in numerous jurisdictions, including, but not limited to Turkey. Among them, but by no means limited to, are the following trademark registrations:

- International Registration IQOS (word) No. 1218246, registered on July 10, 2014, designating several countries including Turkey,
- International Registration IQOS (device) No. 1329691, registered on August 10, 2016, designating several countries including Turkey,
- International Registration IQOS (device) No. 1338099, registered on November 22, 2016, designating several countries including Turkey,
- International Registration IQOS (device) No. 1461017, registered on January 18, 2019, designating several countries including Turkey,
- International Registration HEETS (device) No. 1328679, registered on July 20, 2016, designating several countries including Turkey,
- International Registration HEETS (word) No. 1326410, registered on July 19, 2016, designating several countries including Turkey,
- International Registration IQOS SIMPLY AMAZING No. 1493685, registered on July 25, 2019, designating several countries.

The disputed domain names, <primeiqos.com> and <buhariqostrend.com>, were respectively registered on January 28, 2022 and January 14, 2022. The disputed domain names resolve to websites, where electronic cigarette products, including the Complainant's, are allegedly sold.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends the following:

- The disputed domain names <buhariqostrend.com> and <primeiqos.com> identically adopt the Complainant's IQOS trademarks and are confusingly similar to the trademark registrations of the Complainant.
- The applicable Top-Level-Domain ("TLD") in a domain name is viewed as a standard registration requirement and, as such, is disregarded under the first element confusing similarity test.
- The addition of merely generic, descriptive, or geographical wording to a trademark in a domain name would normally be insufficient, in itself, to avoid a finding of confusing similarity under the first element of the UDRP. The disputed domain names reproduce the IQOS trademark in its entirety along with the words "buhar" (it means "steam" in English), "trend" and "prime".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names because:

- The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain names incorporating its IQOS trademark.
- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of the Complainant.
- The Respondent is not an authorized reseller of the IQOS System.
- Neither the Complainant nor its affiliates offer for sale in Turkey a product under the IQOS trademark, and hence the offering on the online shop at the websites resolving from the disputed domain names are further misleading, in that it suggests to consumers that they can legitimately purchase this product in Turkey.

The disputed domain names have been registered and are being used in bad faith because:

- The Respondent's use of the disputed domain names are not fair, because it falsely suggests at least an affiliation with the Complainant by virtue of the disputed domain names reproducing the Complainant's IQOS trademarks in its entirety, accompanied by the words buhar (meaning "steam" in English), "trend" and "prime".
- Any Internet user when visiting the websites provided under the disputed domain names will reasonably expect to find a website commercially linked to the owner of the IQOS trademarks. This unlawful association is exacerbated by the use of the Complainant's official product images without the Complainant's authorization.

The disputed domain name <primeiqos.com> is linked to an online shop at "www.primeiqos.com", and the disputed domain name <buhariqostrend.com> is linked to an online shop at "www.buhariqostrend.com" (collectively referred to as the "Websites") allegedly selling and offering the Complainant's IQOS System.

The Websites are provided in Turkish language. The Respondent is clearly suggesting to be an official distributor. It is not only using the Complainant's IQOS trademark in the disputed domain names accompanied by the terms, but also uses the Complainant's official marketing material and product images.

- The Respondent's use of the disputed domain names shows that the Respondent knew of the Complainant's IQOS trademarks when registering the disputed domain names.

- The Respondent's use of the disputed domain names shows that the Respondent registered and used the disputed domain names with the intention to attract, for commercial gain, Internet users to the Websites, by creating a likelihood of confusion with the Complainant's IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

Paragraph 11(a) of the Rules provides that: "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 has requested English to be the language of the proceeding.

The Panel determines in accordance with the Rules, paragraph 11(a), that the language of this proceeding shall be English for the following reasons:

- The disputed domain names contain the Complainant's trademark IQOS with additional English words "trend" and "prime";

- The Respondent did not reply to the Center communications in both English and Turkish about the language of the proceeding;

- The Complainant is unable to communicate in Turkish. Requiring the Complainant to submit documents in Turkish would lead to delay of the proceeding and cause the Complainant to incur additional translation expenses.

Under these circumstances, the Panel determines English to be the language of this proceeding.

### **6.2. Substantive Issues**

Paragraph 15(a) of the Rules requires the Panel to decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant bears the burden of showing:

(i) that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

(iii) that the disputed domain names have been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant owns trademark rights for the IQOS mark.

The disputed domain names <buhariqostrend.com> and <primeiqos.com> contain the Complainant's trademark IQOS with the words "buhar" (meaning "steam" in English), "trend" and "prime".

The addition of these words does not avoid a finding of confusing similarity between the disputed domain names and the Complainant's marks.

The extension ".com" may be disregarded when examining the identity or confusing similarity between Complainant's IQOS trademark and the disputed domain names.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the trademarks in which the Complainant has rights, satisfying the condition of the Policy paragraph 4(a)(i).

#### **B. Rights or Legitimate Interests**

The Respondent has not provided any evidence of the conditions specified in paragraph 4(c) of the Policy, or any other circumstances giving rise to a right or legitimate interest in the disputed domain names. It is clear that the Respondent has not demonstrated any *bona fide* offering of goods and services by its use of the disputed domain names. Nor has the Respondent shown that it has been commonly known by the disputed domain names. Rather, the evidence of the Complainant suggests that the Respondent has used the disputed domain names in an attempt to trade off the goodwill associated with the Complainant's trademark.

The Complainant also showed, *inter alia*, that the Respondent has neither a license nor any other permission to use the Complainant's trademark in the disputed domain names or otherwise.

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent has failed to demonstrate such rights or legitimate interests or otherwise rebut the Complainant's arguments.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

#### **C. Registered and Used in Bad Faith**

The Panel is of the opinion that when the Respondent registered the disputed domain names it knew that IQOS was the trademark of the Complainant, and that the Respondent registered the disputed domain names in bad faith.

Furthermore, the evidence on the record provided by the Complainant with respect to the Respondent's use of the disputed domain names indicates that the Respondent has used the disputed domain names to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the Websites and the Complainant.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

## **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 names, <buhariqostrend.com> and <primeiqos.com>, be transferred to the Complainant.

*/Dilek Ustun Ekdial/*

**Dilek Ustun Ekdial**

Sole Panelist

Date: April 28, 2022