

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Faruk Pazarlama
Case No. D2022-0741

1. The Parties

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

The Respondent is Faruk Pazarlama, Turkey.

2. The Domain Name and Registrar

The disputed domain name <iqstamiri.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on March 7, 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 on March 8, 2022.

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 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 29, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on April 1, 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 is part of the group of tobacco companies affiliated with Philip Morris International, Inc (“PMI”).

Amongst other things, the group produces tobacco products branded “Heets” or “HeatSticks” that are designed to be inserted into another of the Complainant’s products, “IQOS”, a heating device which the Complainant describes as a “Reduced Risk Product”. There are approximately 19.1 million customers using the IQOS system worldwide.

The Complainant owns a number of registered trade marks for IQOS including International Registration No. 1218246 for HEETS, registered on July 10, 2014, in classes 9, 11, and 34.

The disputed domain name was registered on September 11, 2021.

The disputed domain name was used for a website in Turkish headed with the Complainant’s “IQOS” logo and which purported to offer repair and maintenance services for the Complainant’s IQOS System. The website included unauthorised copies of the Complainant’s official product images and official store get-up, accompanied by a false copyright notice stating: “© İqos Tamir, Parça Değişimi ve Onarım Servisi İstanbul Türkiye. Tüm Hakları Saklıdır. [...] İqos Tamir İqos Yetkili Servisi İstanbul İqos” (which can be roughly translated into English as “© Iqos Repair, Parts Replacement and Repair Service Istanbul Turkey. All rights reserved. [...] Iqos Repair Iqos Authorized Service Istanbul Iqos”).

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The disputed domain name is confusingly similar to the Complainant’s trade mark as it consists of a term that is phonetically similar to, and a misspelling of, the Complainant’s trade mark, in addition to the term “tamiri”, meaning “repair” in the Turkish language. A finding of confusing similarity is supported by the content of the Respondent’s website.

The Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has not authorised the Respondent to use its trade mark.

The Respondent is not making legitimate noncommercial or fair use of the disputed domain name.

Nor is the Respondent making a *bona fide* offering of goods or services.

The Respondent is not an authorised repairer of the Complainant’s system. Nor does the Respondent qualify as a legitimate repair services operator for the purposes of the UDRP because the disputed domain name of itself suggests at least an affiliation with the Complainant, as does the Respondent’s website, including by means of use of the Complainant’s logo and official product images accompanied by a false copyright notice as well as by the lack of information about the Respondent’s identity. Accordingly, consumers are likely to believe that the Respondent is an official repair store operator of the Complainant.

The illegitimacy of the Respondent’s offering is highlighted by the fact that the Complainant does not currently offer its IQOS system for sale in Turkey.

The disputed domain name was registered and is being used in bad faith.

The Respondent was aware of the Complainant's trade mark when registering the disputed domain name. The Respondent purportedly started offering repair services for the Complainant's IQOS system immediately after registering the disputed domain name. Furthermore, the term "IQOS" was coined by the Complainant and is unique to it.

The Respondent registered and used the disputed domain name with intention of creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy, including by using an obvious misspelling of the Complainant's trade mark in the disputed domain name (with the addition of the term "tamiri", which means "repair" in the Turkish language) and in the website title, thereby falsely implying that the Respondent is an authorised repairer of the Complainant's products, as well as by the Respondent's unauthorised use of the Complainant's official product images, accompanied by a false copyright notice.

The Respondent has also engaged in a pattern of bad faith conduct in relation to domain names incorporating the Complainant's trade marks. See *Philip Morris Products S.A. v. Serhat Kocapinar, Inlife Bilisim*, WIPO Case No. [D2021-2943](#) concerning the domain name <iqstamir.com> which, based on its similarity with the disputed domain name and its use for a similar website, the Complainant believes was also controlled by the Respondent.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark IQOS, as well as unregistered trade mark rights deriving from the Complainant's extensive use of that mark.

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Furthermore, section 1.8 of [WIPO Overview 3.0](#) states that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of an obvious misspelling of the Complainant's trade mark together with the term "tamiri", meaning "repair" in Turkish.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

As to paragraph 4(c)(i) of the Policy, the Respondent is purporting to repair the Complainant's own goods. The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “Oki Data requirements”).

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirements to accurately and prominently disclose the Respondent's relationship with the trade mark holder. On the contrary, as explained in section 6C below, the Panel considers that the Respondent has effectively set out to impersonate the Complainant.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be *bona fide* under the Policy.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Given the Respondent's selection of a domain name reflecting a misspelling of the Complainant's distinctive mark and the evidence of its use for a website that effectively set out to impersonate the Complainant including by prominent use of the Complainant's logo as well as by use of the Complainant's official product images, the Panel readily concludes that the disputed domain name was registered and is being used in bad faith by the Respondent in accordance with paragraph 4(b)(iv) of the Policy. The Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark.

Furthermore, the Complainant has asserted that the Respondent is the controller of the similar domain name <iqstamir.com> which was used for a website similar to that of the disputed domain name and which was the subject of a bad faith finding in *Philip Morris Products S.A. v. Serhat Kocapinar, Inlife Bilisim*, WIPO Case No. [D2021-2943](#). Indeed, the Panel notes that the disputed domain name was registered only a few days after the filing of the complaint in that case. In these circumstances, the Panel considers it likely that, as the Complainant contends, the Respondent has engaged in a pattern of bad faith registration and use of domain names reflecting the Complainant's trade marks.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 <iqstamiri.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 14, 2022