

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Yunus Emre Celik
Case No. D2022-1483

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by Boehmert & Boehmert, Germany.

The Respondent is Yunus Emre Celik, Turkey.

2. The Domain Name and Registrar

The disputed domain name <iqturk.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2022. On April 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 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 amendment to the Complaint on April 28, 2022.

The Center verified that the Complaint together with the amendment to the 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 April 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2022. The Respondent did not submit any formal response, but submitted an informal communication email on May 17, 2022. Accordingly, the Center notified the commencement of administrative proceeding on May 17, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on May 27, 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 Philip Morris International Inc. ("PMI"), which is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. The Complainant has developed a number of reduced risk products ("RRPs"), one of which is a tobacco heating system called IQOS. Today the IQOS system is available in key cities in 71 markets across the world.

The Complainant owns the trademark IQ, which is registered as a European Union Trademark No. 018226787 with priority from April 16, 2020 and registered on August 5, 2020. The Complainant is also the owner of the International Trademark Registrations No 1218246 IQOS, registered on July 10, 2014, and No. 1329691 IQOS (fig), registered on August 10, 2016.

The disputed domain name was registered on July 6, 2020, and resolves to a website in Turkish, allegedly offering the Complainant's IQOS System but also competing products which are not related to the Complainant and its IQOS System.

5. Parties' Contentions

A. Complainant

The disputed domain name consists of the Complainant's trademark IQ and the descriptive indication "turk". The Respondent's website is also targeting the Complainant through the disputed domain name.

The Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use its trademark or to register the disputed domain name. The Respondent's behavior shows clear intention to obtain unfair commercial gain from the Complainant's trademark.

It is evident that the Respondent knew of the Complainant's trademarks when registering the disputed domain name. It is also clear that the Respondent is using the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

The Respondent did not submit any formal response to the Complainant's contentions.

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

Furthermore, "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements". See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant's trademark, which is clearly recognizable in the disputed domain name. The addition of the term "turk", referring to Turkey, or Turkish, to where the Respondent's website is also targeted, is not sufficient to remove similarity with the Complainant's trademarks.

This means that the disputed domain name is confusingly similar with the Complainant's trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy. In addition, the Panel notes that the website at the disputed domain name includes links to competing products such as "ELF BAR", and therefore, the Respondent is not engaging in a fair use of the disputed domain name.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has 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 [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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 [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.”

The disputed domain name is redirected to a website at <enargil.com>, where the Complainant’s trademark IQOS is used in connection with products that appear to be smoke-free tobacco products. The website also includes product images copied from the Complainant’s website.

The Panel notes that the website at the disputed domain name has a disclaimer at the bottom that states “IQOS HEETS TÜRKİYE PARTNER”, meaning “IQOS Heets Turkey Partner” in Turkish, which gives the false impression that the Respondent is the Complainant’s partner within Turkey. Therefore, the Panel finds that the Respondent has taken steps to unfairly pass itself off as related to the Complainant or to create confusion on Internet users.

The disputed domain name is therefore used to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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, <iqturk.com> be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: June 13, 2022