

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Rohan mubbashir Khan
Case No. D2022-2629

1. The Parties

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

The Respondent is Rohan mubbashir Khan¹, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqmagaza.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 July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 20, 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 July 25, 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 July 26, 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 July 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 19, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Marilena Comanescu as the sole panelist in this matter on August 24, 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 a subsidiary of Philips Morris International, Inc., an international tobacco company, which is selling its products in approximately 180 countries worldwide.

The Complainant manufactures tobacco products, including a system promoted under the mark IQOS, which is an alternative to combustible cigarettes and consists of a controlled heating device into which specially designed tobacco products are inserted and heated to generate a flavourful nicotine-containing aerosol (the "IQOS System"). The IQOS System was launched in Japan in 2014 and, with investments of USD 9 billion in science, research, sales and marketing, it is currently sold in 71 markets across the globe reaching approximately 19,1 million relevant consumers. The Complainant's IQOS System is primarily distributed through official or endorsed stores.

The Complainant holds trademarks for IQ and/or IQOS, such as the following:

- the European Union trademark registration number 018226787 for the word IQ, filed on April 16, 2020 and registered on August 5, 2020, and covering goods in Nice classes 9 and 34; and
- the International trademark registration number 1218246 for IQOS, registered on July 10, 2014, designating many countries worldwide including Türkiye, and covering goods in Nice classes 9, 11 and 34.

The disputed domain name <iqmagaza.com> was registered on November 8, 2021. At the time of filing the Complaint, the disputed domain name was connected to a commercial website allegedly selling and offering the Complainant's IQOS System, displaying the Complainant's trademarks (e.g., IQ, IQOS, HEETS, and MARLBORO) and official product images, as well as third parties' competing products. The website under the disputed domain name is provided in Turkish language and appears to be directed to the Turkish market whereas the Complainant's IQOS System is not available on this market.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-known and distinctive trademarks IQ and/or IQOS, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent's default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the IQ trademark.

The disputed domain name <iqmagaza.com> incorporates the Complainant's trademark IQ with an additional term, "magaza". However, such addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical wording, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name is not sufficient to escape a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".site", ".info", ".shop") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark IQ, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license or authorization whatsoever to use the marks IQ and/or IQOS, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

There is nothing in the record suggesting that the Respondent has made a *bona fide* use of the disputed domain name, or has been known by this disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name.

In fact, at the time of filing the Complaint, the disputed domain name resolved to a commercial website featuring the Complainant's trademarks and offering for sale unauthorized products bearing the Complainant's trademarks as well as third parties' competing goods.

In this case, assuming that the products or at least some of the products offered for sale under the disputed domain name were genuine IQ and IQOS branded products, the key question under this element is whether the Respondent's use of the disputed domain name for such resale amounts to a *bona fide* offering of goods under paragraph 4(c)(i) of the Policy. The current state of UDRP panel decisions in relation to this issue is

helpfully summarized in section 2.8 of the [WIPO Overview 3.0](#) as follows:

Normally, a reseller, distributor or service provider can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, the site's accurately and prominently disclosing the registrant's relationship with the trademark holder and the respondent must not try to "corner the market" in domain names that reflect the trademark. This summary is based on UDRP panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

At least two conditions that are outlined have clearly not been satisfied by the Respondent in this case: at the time of filing the Complaint, on the website under the disputed domain name, third parties' competing goods were offered and there was no accurate information regarding the Respondent and its relationship (in fact the lack thereof) with the Complainant thus generating a likelihood of confusion for the Internet users accessing the Respondent's website.

Further, the Complainant does not currently offer for sale its IQOS System in the territory of Türkiye, and the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System into the Turkish market.

In addition, and without prejudice to the above, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety in combination with a generic term, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds registered trademark rights for IQ and IQOS since 2020 and 2014 respectively, and has reputation worldwide.

The disputed domain name was created in 2021 and incorporates the Complainant's mark with an additional non-distinctive term "magaza", which means "shopping centre" in Turkish.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business and particularly targeting its IQ and IQOS trademarks.

The Respondent is using without permission the Complainant's trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's distinctive trademark in the disputed domain name, the content on the website provided thereunder which includes the Complainant's trademarks and official product images.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "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" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name displays the Complainant's trademarks and official product images, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or

somehow affiliated or related to the Complainant, for its commercial gain.

The Respondent was involved in several other UDRP cases as a respondent, all targeting the Complainant. See *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2020-1755](#) for the domain name <iqosland.com>; *Philip Morris Products S.A. v. Rohan mubbashir Khan*, WIPO Case No. [D2021-1314](#) for the domain name <heetsepeti.com>; and *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#) for the domain name <iqsepeti.com>.² Such circumstances may indicate that the Respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name and demonstrate that the Respondent is engaged in a pattern of such conduct. Such conduct constitutes bad faith under paragraph 4(b)(ii) of the Policy.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark constitutes, by itself, a presumption of bad faith registration for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <iqmagaza.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: September 1, 2022

² See the Panel's prerogative to conduct independent searches in public records provided under section 4.8 of the [WIPO Overview 3.0](#).