

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Liza Zagorova
Case No. D2023-0019

1. The Parties

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

The Respondent is Liza Zagorova, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <iqoussaudi Arabia.com> is registered with 101domain GRS Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 3, 2023. On January 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 2023, 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 also on January 6, 2023 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 January 9, 2023.

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 January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on February 8, 2023. 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 Philip Morris Group (“Group”), a leader in the field of tobacco, which has been in operation since 1972. The Group has developed Reduced Risk Products amongst which is the IQOS system, which was launched in 2014. The brand HEETS and other brands are used with respect to cigarette sticks that are developed according to the IQOS system.

The Complainant owns many trademark registrations for IQOS such as:

- Saudi Arabian trademark registration No. 1439013970, registered on May 14, 2018;
- International trademark registration No. 1218246, registered on July 10, 2014.

The disputed domain name was registered on July 6, 2022, and resolves to a webpage which offers IQOS branded products, as well as third party products.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark IQOS and has registered it in many countries. The disputed domain name incorporates the Complainant’s trademark with a misspelling, which is phonetically identically and visually highly similar to the Complainant’s trademark. The disputed domain name includes the words “saudiarabia”. The addition of descriptive, generic or geographical words is not enough to eliminate confusing similarity. The generic Top-Level Domain (“gTLD”) “.com” should typically be ignored. There is a misspelling in the way the Complainant’s trademark is written by adding the letter “u”, which is not enough to eliminate confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized or licensed by the Complainant to use its trademark. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Respondent is attempting to obtain unfair commercial gain through misleading consumers. The Respondent is not an authorized reseller or distributor of the Complainant. The website of the Respondent is selling competing products. For a reseller or a distributor to make a *bona fide* offering of goods or services, he must meet the *Ok! Data* test which is not met in the instant case as the website offers competing products. Furthermore, the disputed domain name suggests affiliation with the Complainant and hence there can be no fair use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainant’s trademark as the disputed domain name incorporates the Complainant’s trademark and the trademark IQOS is purely imaginative. The disputed domain name was registered with the intent to mislead consumers for commercial gain by creating confusion with the Complainant’s trademark and products. The Respondent is suggesting that the Complainant is the source of the website and is using the images of the Complainant’s products to reinforce such suggestion and is selling third party products through its website. Lastly, the Respondent is using a privacy protection service to hide its true identity, which may in itself constitute a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

A. Preliminary consideration

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may affect case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel does not believe the Respondent is located in Ukraine. The website at the disputed domain name resolved to an English page allegedly selling and offering the Complainant's IQOS System, as well as competing third party products, with all prices in Saudi riyal (ر.س) currency, and an address in the capital city of Saudi Arabia. Therefore, the website at the disputed domain name has clearly indicated that it was directed to Saudi Arabia. Currently, the disputed domain name resolves to an error page. These facts support an inference that the Respondent is not located in Ukraine.

In addition, the Panel notes that the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar, and there is no evidence that the case notification email to this email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar is in Ireland.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and proceeds to issue the present Decision on the substance of the dispute.

B. Identical or Confusingly Similar

The Complainant owns trademark registrations for IQOS. The Panel is satisfied that the Complainant has established its ownership of the trademark IQOS.

The disputed domain name incorporates the Complainant's trademark adding the letter "u". This is a typical case of typosquatting, which is designed to confuse users (*Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#)).

The term "saudiarabia" does not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademark. The generic Top-Level Domain ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its trademark. The Respondent should prove that it has rights or legitimate interests.

According to the Policy, the use of the disputed domain name would be legitimate if it is used in connection with a *bona fide* offering of goods or services. The website to which the disputed domain name resolves offers products of the Complainant. Therefore, there may be an argument that the disputed domain name is being used in connection with a *bona fide* offering of products. In line with the *Ok! Data* test, a number of requirements have to be met (see *Ok! Data, supra*):

1. "Respondent must actually be offering the goods or services at issue";
2. "Respondent must use the site to sell only the trademarked goods";
3. "The site must accurately disclose the registrant's relationship with the trademark owner"; and
4. "The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name".

The Panel analyzes each of these requirements below:

- Requirement No. 1: This requirement is met;
- Requirement No. 2: This requirement is not met in the instant case as the disputed domain name resolves to a website which offers the Complainant's products together with other products or accessories;
- Requirement No. 3: This requirement is not met as the website does not include a statement demonstrating that it does not belong or is not affiliated with the Complainant;
- Requirement No. 4: This requirement is met as there are no numerous registrations by the Respondent of domain names containing the trademark of the Complainant.

Requirements No. 2 and 3 have not been met. Therefore, it is the Panel's view that the requirements of the *Ok! Data* test have not been met.

Moreover, the Respondent did not reply to the Complainant's contentions.

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The Respondent clearly knew of the Complainant's business and trademark as the disputed domain name resolves to a website offering the products of the Complainant. The nature of the disputed domain name suggests affiliation with the Complainant as it incorporates the Complainant's trademark with a typo and the Complainant's trademark is a fanciful word that has no dictionary meaning, which renders it distinctive. The display of multiple trademarks belonging to the Complainant such as IQOS and HEET, together with product images reinforces the impression that the disputed domain name is affiliated with the Complainant.

The disputed domain name resolves to a website, which offers not only the Complainant's products but also other products of the same nature. Offering competing products is an indication of bad faith use. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer competing services. This is an act of bad faith (see *Intex Recreation Corp. v. RBT, Inc., Ira Weinstein*, WIPO Case No. [D2010-0119](#); *MasterCard International Incorporated v. Global Access*, WIPO Case No. [D2008-1940](#)).

Such conduct falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, and accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <iqoussaudiArabia.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: February 14, 2023