

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Ercan Boz
Case No. D2024-1242

1. The Parties

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

The Respondent is Ercan Boz, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <istiqosterea.com> is registered with ODTÜ Geliştirme Vakfı Bilgi Teknolojileri Sanayi Ve Ticaret Anonim Şirketi (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 25, 2024, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 26, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed two amended Complaints on March 30 and April 10, 2024.

On March 26, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On March 30, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amended Complaints 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 both in English and Turkish of the Complaint, and the proceedings commenced on April 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 2, 2024.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on May 7, 2024. 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 International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS, TEREА and HEETS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located. According to the Complaint, the Complainant is, among others, the registered owner of the following trademark registrations:

- Turkish Registration TEREА (word) No. 2019 128867, registered on September 17, 2020;
- Turkish Registration IQOS ILUMA (word) No. 2019 128850, registered on November 6, 2020 (with priority date of September 16, 2019);
- Turkish Registration ILUMA (word) No. 2019 128833, registered on September 22, 2020 (with priority date of September 16, 2019);
- International Registration IQOS (word) No. 1218246, registered on July 10, 2014, designating several jurisdictions including Türkiye;
- International Registration IQOS (device) No. 1557546, registered on August 27, 2020, designating several jurisdictions including Türkiye;
- International Registration HEETS (word) No. 1326410, registered on July 19, 2016, designating several jurisdictions including Türkiye

covering trademark protection, inter alia, for electronic cigarettes as covered in classes 9 and 11 pursuant to Annex 6 to the Complaint.

The disputed domain name was registered on September 29, 2023.

The screenshots, as provided by the Complainant, show that the disputed domain name resolved to a website in the Turkish language, which was used for allegedly offering IQOS, TEREА and HEETS smoke-free products as well as potentially competing third-party products. Those offers are made under the Complainant's trademarks and alongside the unauthorized use of some of the Complainant's official product images. The website is provided in Turkish and the lists prices are in Turkish Lira, the currency of Türkiye, notwithstanding that the Complainant does not officially sell its IQOS system in Türkiye.

The Respondent is a real person from Türkiye.

The Panel visited the disputed domain name on May 8, 2024, and determined that the disputed domain name is still active, and the disputed domain name resolves to a website in Turkish which allegedly offers IQOS, TEREА and HEETS smoke-free products as well as third-party products.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the registered trademarks because it adopts the trademarks in its entirety and merely adds a geographical abbreviation for the Istanbul, i.e., "ist" which addition is normally insufficient to avoid a finding of confusing similarity and in fact may serve to increase the likelihood of confusion by suggesting that a domain name registrant is the local representative of a trademark owner. Furthermore, the generic Top-Level Domain ("gTLD") in a domain name is viewed as a standard registration requirement and is disregarded under the first element test.

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Complainant has not licensed or permitted the Respondent to use any of its trademarks or to register a domain name incorporating its trademarks. The Respondent is not an authorised distributor or reseller of the Complainant's IQOS system, and the Website at the disputed domain name does not meet the requirements for a bona fide offering of goods. The Respondent's unauthorised use of the Complainant's official product images is further evidence of a lack of legitimacy in the Respondent's dealings with the disputed domain name.

The Complainant argues that the Respondent registered and is using the disputed domain name in bad faith by creating a false impression that the website is officially associated with or endorsed by the Complainant, by using it in conjunction with the Complainant's official product images and even claiming copyright protection for the Website and its contents, and by using a privacy protection service to hide its true identity.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

6.1. Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, 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. The registration agreement is in Turkish. The Complaint was filed in English.

On March 30, 2024, the Complainant submitted a reply to the Center's request regarding the language of proceeding that although the registration agreement is in Turkish, the Complainant requests that the language of proceeding be English as the Complainant has no knowledge of Turkish language.

The Complainant notes that the Website under the disputed domain name includes a number of English words and/or phrases, suggesting the Respondent understands English, and being English a common language in global business and also a language, in which the Respondent is doing business, decided to file the Complaint in English.

In addition to Complainant's submission regarding the language of the proceedings, it appears that the Respondent did not submit a Response nor did he formally object to English as the language of the proceeding.

Taking into account all the above elements, as well as the Panel's authority to determine the language of the proceedings differing from the language of the registration agreement in accordance with the paragraph 11(a) of the Rule, the Panel considers that the appropriate language of the proceeding shall be English.

6.2. Substantive Issues

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the IQOS and TERE marks is reproduced within the disputed domain name and the said marks are easily recognizable within the disputed domain name. Although the addition of the geographical term "ist" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the said marks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is also well accepted that a gTLD, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In this regard, the Panel particularly believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("Oki Data") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in Oki Data are apparently not fulfilled in the present case. The Panel notes that the Respondent purportedly offers not only products of the Complainant but also competing third-party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and/or authorized reseller/distributor for the Complainant's products in Türkiye. In view of the Panel, all this takes the Respondent out of the Oki Data safe harbor for purposes of the second element.

Moreover, given the composition of the disputed domain name, wholly incorporating the Complainant's trademarks with the addition of the geographic term "ist", and the absence of any relationship between the Respondent and the Complainant, the Respondent's use of the disputed domain name carries a risk of implied affiliation with the Complainant, and can constitute neither a bona fide use nor a legitimate noncommercial or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has disrupted the business of a competitor by "launching" the sale of the Complainant's IQOS products in Türkiye before the Complainant has done so, and has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the trademarks.

Additionally, the Panel notes that the Respondent must have had the Complainant and its IQOS and TERA trademarks in mind when registering the disputed domain name. It is obvious to the Panel that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users searching for the Complainant and its products. Furthermore, the Complainant's IQOS and TERA trademarks are distinctive and unique to the Complainant. It is therefore beyond the realm of coincidence that the Respondent chose the disputed domain name containing both of the Complainant's trademarks entirely without the intention of creating a false association with the Complainant.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent used the disputed domain name in order to generate traffic to its own website by deliberately misleading third parties in a false belief that the associated website is either operated or at least authorized by the Complainant. The prominent use of the Complainant's IQOS and TERA word marks (as well as the use of further registered trademarks of the Complainant), the offering of potentially competing third-party products

and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its IQOS and TEREА trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has established the third element 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 <istiqosterea.com> be transferred to the Complainant.

/Gökhan Gökçe/

Gökhan Gökçe

Sole Panelist

Date: May 21, 2024