

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Domain Administrator / irangraphical company,
irangraphical

Case No. D2022-2630

1. The Parties

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

The Respondent is Domain Administrator, United Kingdom / irangraphical company, irangraphical, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <iqosatam.com> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (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 20, 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 21, 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 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on August 22, 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 companies affiliated to Philip Morris International Inc. (“PMI”). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

PMI has developed a precisely-controlled heating device, called IQOS, into which specially designed tobacco products, sold under the brand names “HEETS”, “HeatSticks” or “TEREA”, are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the “IQOS System”). The IQOS System was first launched by PMI in Japan in 2014, and is now available in around 71 markets across the world, with approximately 19.1 million consumers. To date, the IQOS System has been almost exclusively distributed through PMI’s official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant owns a large portfolio of trademark registrations, including the International Trademark Registration No. 1218246 (registered on July 10, 2014) for the word trademark IQOS (“IQOS word trademark”), and the International Trademark Registration No. 1338099 (registered on November 22, 2016) for the device trademark **IQOS** (“IQOS device trademark”).

The disputed domain name was registered on April 15, 2022. The Complainant has provided screenshots, taken on July 1, 2022, of the website to which the disputed domain name resolves, at which appears the words “ATAM STORE”, the IQOS word trademark, the IQOS device trademark, and a selection of purported IQOS products offered for sale apparently using the Complainant’s official product images. The website is in both English and Persian, while the prices shown are in the Iranian Toman currency. At the time of this decision, the disputed domain name resolves to a website very similar to the one in the Complainant’s screenshots.

5. Parties’ Contentions

A. Complainant

The Complainant stated that the Registration Agreement was in Turkish, and provided arguments as to why the language of the administrative proceeding should be English.

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name identically adopts the Complainant’s IQOS trademark. The generic Top-Level Domain (“gTLD”) is viewed as a standard registration requirement and, as such, is disregarded. The disputed domain name reproduces the IQOS trademark in its entirety, in addition to the non-distinctive string “atam”.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks, or to register a domain name incorporating its IQOS trademark (or a domain name which will be associated with this trademark). The Respondent shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant. The Respondent is not an authorized distributor or reseller of the IQOS System. The website to which the disputed domain name resolves does not meet the requirements set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), because: (i) the disputed

domain name in itself suggests at least an affiliation with the Complainant and its IQOS trademark; (ii) the owner / administrator of the website prominently, and without authorization, presents the Complainant's registered IQOS device trademark within the website banner, as well as using the Complainant's registered IQOS word trademark within the tab interface of the website, where relevant consumers will usually expect to find the name of the online shop and/or the name of the website provider; and (iii) the website uses the Complainant's official product images without authorization, while at the same time falsely claiming copyright in this material, further supporting the false impression that the website is endorsed by the Complainant, which it is not. The website includes no information regarding the identity of the provider of it, which is only identified as "IQOS ATAM" on the website. As the Complainant's IQOS System is primarily distributed through official/endorsed stores, Internet users and relevant consumers are clearly misled regarding the relationship between the website and the Complainant, and will falsely believe that this website is an official or endorsed distributor of the Complainant's products. The Complainant does not currently offer for sale its IQOS System in the territory of Iran, 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 Iranian market.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainant's IQOS trademark when registering the disputed domain name, as the Respondent started offering the Complainant's IQOS System immediately after registering it. As the term IQOS is an imaginative term unique to the Complainant, it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant. The Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location. By reproducing the Complainant's registered trademark in the disputed domain name and the title of the website to which it resolves, the Respondent is clearly suggesting to any Internet user visiting it, that the Complainant is the source of the website, which it is not. This is further supported by the Respondent's use of the Complainant's official product images accompanied by a copyright notice claiming the copyright for the website and its contents. The fact that the Respondent is using a privacy protection service to hide its true identity 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. Language of the Proceeding

Although the Complainant stated that the Registration Agreement was in Turkish, the Registrar, in its verification response to the Center, indicated that the Registration Agreement was in English. Accordingly, pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding is English.

B. Identical or Confusingly Similar

Once the gTLD ".com" is disregarded (which is appropriate in this case) for the purposes of the first element, the disputed domain name consists of the Complainant's registered IQOS word trademark, followed by the string "atam". The Complainant's trademark is clearly recognizable within the disputed domain name. The addition of the string "atam" does not avoid a finding of confusing similarity of the disputed domain name with the trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

C. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its IQOS word trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name has been used to resolve to a website displaying the IQOS word trademark and the IQOS device trademark, and purporting to offer IQOS products for sale. The contents of the Respondent's website are such that many Internet users will form the false belief that the website is operated or endorsed by, or affiliated with, the Complainant. Given the confusing similarity of the disputed domain name to the Complainant's trademark, the absence of any relationship between the Respondent and the Complainant, and the failure to avoid the implied false affiliation with the Complainant, the Respondent's use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

D. Registered and Used in Bad Faith

The disputed domain name was registered several years after the Complainant first registered its IQOS word trademark. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant's trademark, given that the disputed domain name consists of the Complainant's trademark in its entirety with merely the addition of the string "atam", and that the Respondent used the disputed domain name to resolve to a website that displays the Complainant's trademark and purports to offer for sale the Complainant's goods.

Given the Respondent's lack of rights or legitimate interests in the disputed domain name, and the confusing similarity of the disputed domain name to the Complainant's trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist. The Respondent's registration of the disputed domain name in these circumstances is a bad faith registration.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. The Respondent's use of the disputed domain name in this manner is a bad faith use.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

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

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: September 6, 2022