

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Ali Ghanbari
Case No. D2023-3541

1. The Parties

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

The Respondent is Ali Ghanbari, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <erviniqos.online> is registered with Hosting Concepts B.V. d/b/a <Registrar.eu> (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 22, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 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 August 28, 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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 22, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on September 29, 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, Philip Morris Products S.A., is part of the group of companies affiliated to Philip Morris International, Inc., an international tobacco company, which is selling its tobacco and smoke-free 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 was launched in Japan in 2014 and, with investments of USD 9 billion in science, research, sales and marketing, its 5 versions of the IQOS heating device available, 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 IQOS in many jurisdictions worldwide, such as the following:

- the International trademark registration number 1218246 for IQOS, registered on July 10, 2014, designating many jurisdictions worldwide including the European Union and the United Kingdom, and covering goods and services in International Nice classes 9, 11 and 34;
- the International trademark registration number 1329691 for IQOS with device and colors, registered on August 10, 2016, designating many jurisdictions worldwide including the European Union and the United Kingdom, and covering goods and services in International Nice classes 9, 11 and 34.

The disputed domain name was registered on April 11, 2023. 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 (IQOS and HEETS) and official product images, as well as displaying the "ERVINIQOS" logo which includes IQOS mark and also adopts a similar color scheme as that used in the Complainant's IQOS trademark. The website under the disputed domain name is provided in Persian language, the prices are indicated in Iranian toman currency and therefore it appears to be directed to the Iranian market whereas the Complainant's IQOS system is not available on the Iranian market. The website under the disputed domain name does not show any details regarding the disputed domain name holder nor does it acknowledge the Complainant as the real brand owner of the IQOS system, and claim copyright over the material displayed.

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 its trademark because it is formed of the well-known mark with the additional non-distinctive and descriptive word "erwin"; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith, purporting to be an official online retailer of the Complainant's IQOS System in Iran (Islamic Republic of).

The Complainant has reason to believe that the Respondent is connected to the respondent involved in the previous UDRP case, WIPO Case No. [D2023-0837](#), *Philip Morris Products S.A. v. Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a <Registrar.eu>*.

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;
- (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

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other term here, "ervin", 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. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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.

The disputed domain name is used in connection with a website purportedly providing goods of the Complainant, without any disclaimer or authorization from the Complainant. Even if the goods were genuine, the lack of any disclaimer on the website at the disputed domain name would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant. Accordingly, such use cannot be considered “fair”, nor to have conferred upon the Respondent any rights or legitimate interests.

Furthermore, the composition of the disputed domain name (being a well-known trademark and a non-distinctive term) carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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 disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because it incorporates the Complainant’s IQOS well-known trademark registered since 2014. Furthermore, the use of the disputed domain name in relation to promoting similar goods corroborates this judgement.

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.

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, and has no disclaimer, 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. This activity is also causing disruption of the Complainant’s activity.

The Respondent (directly or through an associated person) was very likely involved in a previous UDRP case as a respondent, targeting the Complainant. See WIPO Case No. [D2023-0837](#), *supra*. 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. If so, such fact would constitute bad faith under paragraph 4(b)(ii) of the Policy.

Further, the Respondent failed to provide a response to the Complainant’s allegations and the physical address listed in the Whois was inaccurate or incomplete. Along with other circumstances in this case, such facts constitute further signs of bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <erviniqos.online> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: October 13, 2023