

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. serdar comez

Case No. D2023-4227

1. The Parties

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

The Respondent is serdar comez, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqosturkey.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 October 12, 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 October 16, 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 October 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2023.

The Center appointed Gareth Dickson as the sole panelist in this matter on December 4, 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 group of companies affiliated to Philip Morris International, Inc. ("PMI"), which is an international tobacco and smoke-free products company based in Switzerland. The Complainant's products are sold in approximately 180 countries.

Since 2014, PMI has sold a smoke-free, controlled heating device system called IQOS, into which specifically designed tobacco sticks are inserted and heated to generate a nicotine-containing aerosol. The IQOS system is available in approximately 70 markets across the world with approximately 19 million consumers. It is almost exclusively distributed through PMI's official IQOS stores and websites as well as selected authorised distributors and retailers.

The Complainant owns trade mark registrations for IQOS (the "Mark") around the world, including:

- International trade mark registration number 1218246 for IQOS (word), registered on July 10, 2014; and
- International trade mark registration number 1338099 for IQOS (word/device), registered on November 22, 2016.

The disputed domain name was registered by the Respondent on January 23, 2023, and has been used to direct Internet users to a website featuring an online shop which purports to offer for sale the Complainant's IQOS products (the "Website"). Those offers are made under the Mark and alongside the unauthorised use of some of the Complainant's official product images. The Website is provided in Turkish and lists prices in Turkish Lira, the currency of Türkiye, notwithstanding that the Complainant does not sell its IQOS system in Türkiye.

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 Mark because it adopts the Mark in its entirety and merely adds a geographical term "Turkey", 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 trade mark owner. Furthermore, the Top-Level Domain ("TLD") 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 trade marks or to register a domain name incorporating the Mark. The Respondent is not an authorised distributor or reseller of the Complainant's IQOS system, and the Website does not meet the requirements for a *bona fide* offering of goods, not least because the Complainant does not make its IQOS system available in Türkiye. 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

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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Mark is reproduced 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.

The Panel also finds the Mark is recognizable within the disputed domain name, which supports a finding that the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here being the geographical term "Turkey", 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.

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 particular, the evidence before the Panel is that the Respondent is not making any use of the disputed domain name for a *bona fide* offering; is not commonly known by the disputed domain name; and is not making a legitimate noncommercial or fair use of the disputed domain name.

If the Respondent could be said to be offering genuine IQOS products on the Website, it would be necessary to consider whether such offer could amount to the *bona fide* offering of goods and services and thus constitute rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.8.1. For the purposes of the Policy, those circumstances have been set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”), which sets out four requirements which must all be met for the use to be considered *bona fide*.

These requirements may be stated briefly as follows:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the site to sell only the trade marked goods;
- The site must accurately disclose the registrant’s relationship with the trade mark owner; and
- The Respondent must not try to corner the market in all domain names, thus depriving the trade mark owner of reflecting its own mark in a domain name.

Even assuming that the goods offered by the Respondent on the Website are genuine goods first put on the market by the Complainant or with its consent, the Respondent cannot benefit from Oki Data since the Respondent has not accurately disclosed the lack of any relationship between it and the Complainant, notwithstanding that a commercial relationship will be inferred in light of the Respondent’s use of the Mark in the disputed domain name and on the Website. Moreover, this impersonation of the Complainant is reinforced given the use of the Complainant’s copyrighted material on the website to which the disputed domain name resolved, reflecting the Respondent’s intent to mislead Internet users into the false belief of an association or sponsorship by the Complainant. Such conduct can never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13. Lastly, the Panel also notes that the website at the disputed domain name featured images of women apparently modeling clothing, at least one of which includes a price in Turkish Lira. While it is unknown whether such products (clothing) are also being offered for sale or such images are just placeholders, clearly such provision of third party goods would also run afoul of the above-mentioned Oki Data criteria.

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 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 Mark.

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. In all the circumstances of the Complaint, including the lack of response or any evidence from the Respondent to gainsay the Complainant’s evidence, it is inconceivable that the Respondent’s conduct described above does not amount to registration and use of the disputed domain name in bad faith.

Based on the available record, 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 <iqosturkey.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: January 8, 2024