

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mercaterrn Labs
Case No. D2024-1877

1. The Parties

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

The Respondent is Mercaterrn Labs, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqostrsanalmarket.com> is registered with Turkicaret.net Yazilim Hizmetleri Sanayi ve Ticaret A.S. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2024. On May 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 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 (GDRP Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 13, 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 an amended Complaint on May 13, 2024.

On May 13, 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 May 13, 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 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 May 22, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was June 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 13, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 19, 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 (Annexes 4 and 5 to the Complaint).

The Complainant owns various word and figurative IQOS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located. Among others, the Complainant is the registered owner of the International Trademark Registration No. 1218246, registered on July 10, 2014, for IQOS, designating many jurisdictions including Türkiye, and covering trademark protection, inter alia, for electronic cigarettes and related products as protected in class 34 (Annex 6 to the Complaint).

The disputed domain name was registered on March 16, 2024.

Screenshots, as provided by the Complainant, show that the disputed domain name is associated to a website, which is used for purportedly offering various kinds of smoke-free products of the Complainant and of competing third parties. On the associated website, the IQOS word and figurative mark as well as other trademarks (including logos) and official product images of the Complainant are prominently used without a visible disclaimer describing the (lack of) relationship between the Parties (Annex 8 to the Complaint).

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.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Turkish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant has no knowledge of Turkish and that requested translation would be time and costs intensive.

The Respondent did not make any submissions with respect to the language of the proceeding, even though communicated by the Center in Turkish and in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel believes that the Respondent will not be prejudiced by a decision being rendered in English, and determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Issues

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 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.

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 the IQOS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the IQOS 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.

Although the addition of other terms, here the letters "tr" in combination with the terms "sanal" and "market", which is Turkish and means "virtual" and "market", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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.

The Panel particularly believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant’s products in light of *Okı Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“*Okı Data*”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Okı Data* are apparently not fulfilled in the present case. The Panel notes that the Respondent potentially offers not only products of the Complainant but potentially also competing third-party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website 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. This assessment is further supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In view of the Panel, all this takes the Respondent out of the *Okı Data* safe harbour for purposes of the second element.

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.

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 the present case, the Panel notes that the Respondent must have had the Complainant and its IQOS trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant’s widely known IQOS trademark in its entirety, to target and mislead Internet users searching for the Complainant and its products.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent uses 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 word and figurative IQOS marks (including the use of further registered trademarks of the Complainant), the offering of 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 trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

In addition, the Panel finds that the failure of the Respondent to submit a response to the Complainant's contentions further affirms the Panel's conclusion on the Respondent's bad faith.

Consequently, the Panel is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

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 <iqostrsanalmarket.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 3, 2024