

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. ertegaa ertegaa
Case No. D2024-4101

1. The Parties

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

The Respondent is ertegaa ertegaa, Tajikistan.

2. The Domain Name and Registrar

The disputed domain name <iluma.one> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 8, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 8, 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 October 10, 2024.

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 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 4, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on November 11, 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 a group of companies affiliated to Philip Morris International Inc. (jointly referred to as “PMI”). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

While transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”, which the Complainant defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), PMI has developed a number of RRP products, one of which is a tobacco heating system called IQOS.

IQOS is a precisely controlled heating device into which specially designed tobacco sticks identified with the brand names HEETS, HEATSTICKS, TEREA, and ILUMA are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the “IQOS System”). There are six versions of the IQOS heating devices currently available: the IQOS 2.4/IQOS 2.4+ pocket charger and holder, IQOS 3 pocket charger and holder, IQOS 3 Multi device, IQOS 3 DUO/DUOS, IQOS ILUMA and IQOS ILUMA i.

The IQOS System was first launched by PMI in Nagoya, Japan, in 2014 and has obtained a 20 percent share of the market in such country. Today, the IQOS System is available in key cities in around 84 markets across the world and is almost exclusively distributed through PMI’s official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant is the owner, amongst others, of the following trademark registrations:

- International Trademark Registration No. 1764390 for ILUMA (word mark), registered on October 12, 2023, and designating many jurisdictions including Tajikistan, in International Class 34;
- International Trademark Registration No. 1218246 for IQOS (word mark), registered on July 10, 2014, in classes 9, 11 and 34.

The disputed domain name <iluma.one> was registered on July 30, 2024, and is pointed to an online shop provided in Persian language and aimed at an Iranian public allegedly selling the Complainant’s IQOS System, publishing the Complainant’s corporate trademark PHILIP MORRIS INTERNATIONAL as well as the IQOS and ILUMA marks without any disclaimer as to the lack of association with the Complainant. The website also features images, a video, and marketing material taken from the Complainant’s official website. The Complainant does not currently offer for sale its IQOS System in the Islamic Republic of Iran.

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 identical to the ILUMA trademark in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the generic Top-Level Domain (“gTLD”) “.one”.

The Complainant also states that the Respondent has no rights or legitimate interests in the disputed domain name since i) it has not been authorized to use the Complainant’s trademarks and to register the disputed domain name incorporating the ILUMA mark; ii) the Respondent is seeking to obtain an unfair commercial gain, and iii) the Respondent is not an authorized distributor or reseller of the IQOS System and does not meet the requirements set forth in the leading case *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) for a bona fide offering of goods or services, as the Respondent is prominently using the

Complainant's corporate trademark and the ILUMA and IQOS trademarks, and has also displayed official product images on its website without authorization, providing no information regarding the identity of the website operator, which is only identified as "iluma.one", a name which would serve to perpetuate the false impression of an official commercial relationship between the Respondent's website and the Complainant.

The Complainant also submits that the Respondent is giving the impression that the Complainant has been authorized to sell its ILUMA products and IQOS multi devices in the Islamic Republic of Iran, which is not the case since they have not yet been authorized for sale in such country. Such an impression would be amplified by the publication of the following statement reading "Direct import of Philip Morris products" displayed at the top of the Respondent's website.

The Complainant further contends that the Respondent registered the disputed domain name in bad faith as the use of the ILUMA trademark, which is purely an imaginative and unique term to the Complainant, and the Respondent's offer of the Complainant's IQOS System immediately upon registration of the disputed domain name, demonstrates that the Respondent was clearly aware of the Complainant and its products at the time of registration. The Complainant also submits that the Respondent used the disputed domain name in bad faith, with the intention of attracting, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

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.

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. Indeed, the Complainant has provided evidence of ownership of a valid trademark registration for ILUMA.

The Panel finds the entirety of the Complainant's ILUMA trademark is reproduced within the disputed domain name without any variations. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

The applicable gTLD in a domain name, such as the gTLD “.one” in this case, is viewed as a standard registration requirement and is thus disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), sections 1.11.1.

Therefore, 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 notes that there appears to be no actual relationship between the Respondent and the Complainant, and that the Respondent has not received any authorization from the Complainant to register and use the ILUMA mark, including in the disputed domain name. The statements published on the website to which the disputed domain name resolves suggest that the Respondent is an official distributor of the Complainant in the Islamic Republic of Iran. However, the Complainant stated that the Respondent is not one of its authorized distributors and that its smoking products are currently not sold in the Islamic Republic of Iran, and the Respondent did not rebut the Complainant’s assertions.

Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name. The Panel finds that the Respondent’s use of the disputed domain name does not meet the requirements for a reseller or distributor to be making a bona fide offering of goods or services under a domain name incorporating a third-party trademark.

According to section 2.8.1 of the [WIPO Overview 3.0](#), “resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the “Oki Data test”, the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to ‘corner the market’ in domain names that reflect the trademark”.

In the case at hand, at least the third condition is not met since the Respondent has pointed the disputed domain name to a website advertising and offering for sale the Complainant's IQOS System without publishing an accurate and prominent disclaimer on the home page aimed at informing users about its lack of relationship with the Complainant. Moreover, the publication of the Complainant's trademarks and official product images appears to be designed to reinforce the impression that the website corresponding to the disputed domain name is operated by the Complainant or one of its authorized distributors. Furthermore, the Respondent has claimed to be an official distributor of the Complainant which, according to the uncontested allegations of the Complainant, it is not. In addition to the above, since the disputed domain name resolves to a website which is clearly commercial in nature, the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name.

Thus, in view of the above-described use of the disputed domain name, the Panel finds that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Therefore, the Panel finds the second element of the Policy has also been established.

C. Registered and Used 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, considering the prior registration and use of the trademark ILUMA in connection with smoking products of the Complainant and the fact that the Respondent has been offering the Complainant's IQOS System for sale on the website to which the disputed domain name resolves, reproducing the Complainant's trademarks and official images and purporting to be an official distributor of the Complainant in the Islamic Republic of Iran, the Panel finds that the Respondent was clearly aware of the Complainant, its trademarks, and its products at the time of registering the disputed domain name.

The Panel also finds that, in view of the use of the disputed domain name in connection with the website described above, the content of which suggest a connection with the Complainant, the Respondent deliberately registered the disputed domain name to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the ILUMA trademark as to the source, sponsorship, affiliation or endorsement of its website and the products offered for sale therein, according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy as well.

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 <iluma.one> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: November 25, 2024