

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. etil tarimsal, etiltarimsal  
Case No. D2024-4485

### 1. The Parties

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

The Respondent is etil tarimsal, etiltarimsal, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <iqosteream.com> is registered with Wix.com Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2024. On October 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 6, 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 November 7, 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 November 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2024.

The Center appointed Indrek Eelmets as the sole panelist in this matter on December 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 a company, which is part of the group of companies affiliated with Philip Morris International Inc., a leading tobacco and smoke-free products company. The company manufactures and sells tobacco heating systems under various IQOS brands. Iqos is a heating device into which specially designed tobacco sticks under the brand names HEETS, HEATSTICKS, DELIA, LEVIA or TEREА are inserted. It is the owner of several IQOS and TEREА trademarks worldwide, including:

- European Union Intellectual Property Office (EUIPO) Registration IQOS (word) No. 010636611 registered on June 20, 2012;
- International Registration No. 1218246 IQOS (word) registered on July 10, 2014, designating among other countries Türkiye;
- EUIPO Registration TEREА (word) No. 018165161 registered on May 22, 2020;
- International Registration No. 1765887 TEREА (word) registered on October 19, 2023;
- Turkish Registration TEREА (word) No. 2019 128867 registered on September 17, 2020.

The disputed domain name was registered on October 2, 2024, and is linked to an online shop at "www.iqosteream.com" allegedly selling and offering the Complainant's IQOS and TEREА products, as well as third party products.

#### **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 or confusingly similar to the registered trademarks IQOS and TEREА. The disputed domain name reproduces the IQOS and TEREА trademarks in their entirety, in addition to the non-distinctive addition / letter "m". The addition of merely generic, descriptive, or geographical wording to a trademark in a domain name is insufficient in itself to avoid a finding of confusing similarity under the first element of the UDRP.

Further, the Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name. In this regard, it says that:

- 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 and TEREА trademarks;
- the Respondent's behavior shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly divert consumers or to tarnish the trademarks owned by the Complainant;
- the Respondent is not an authorized distributor or reseller of the IQOS products;
- the Respondent is not only offering the Complainant's products but also competing tobacco products and accessories of other commercial origin;
- the disputed domain name suggests at least an affiliation with the Complainant and its IQOS and TEREА trademarks and the use of a domain name cannot be "fair" if it suggests an affiliation with the trademark owner;
- the website to which the disputed domain name resolves, prominently and without authorization presents the Complainant's registered IQOS and TEREА trademarks;

- the website to which the disputed domain name resolves, uses the Complainant's official product images and marketing materials without authorization;
- the website to which the disputed domain name resolves, includes no information regarding the identity of the provider of the website, which is only identified as "İQOS TEREHA HEETS ÇEŞİTLERİ", being a name which similarly includes the Complainant's registered trademarks;
- the Complainant's IQOS branded products are primarily distributed through official / endorsed stores, and therefore Internet users are clearly misled regarding the relationship between the Respondent's website and the Complainant, and will falsely believe the website under the disputed domain name to be an official or endorsed distributor;
- the Complainant does not currently offer for sale its IQOS branded products in the territory of Türkiye, and the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS products into the Turkish market;
- the website to which the disputed domain name resolves, clearly and prominently makes the false statement that allegedly indicates that the website provider is an authorized dealer.

Finally, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant argues that:

- 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 the disputed domain name;
- the term "Iqos" is purely an imaginative term and unique to the Complainant and is not commonly used to refer to tobacco products or electronic devices;
- 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 and TEREHA trademarks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy;
- by reproducing the Complainant's registered trademark in the disputed domain name and the title of the website to which the disputed domain name resolves, the Respondent is clearly suggesting to any Internet user visiting a website provided under the disputed domain name that the Complainant (or an affiliated dealer of the Complainant) is the source of the website, which it is not. This suggestion is supported by the Respondent's use of the Complainant's official product images and marketing materials, as well as a reproduction of the Complainant's official Iqos System videos, accompanied by a copyright notice claiming the copyright for the Website and its contents;
- the abusive use of the Complainant's IQOS and TEREHA trademarks for purposes of promoting competing products is a clear-cut trademark infringement and constitutes clear evidence of the Respondent's bad faith.

## **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.

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 disputed domain name incorporates both marks in their entirety. 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 elements here, the letter “m”, may bear on assessment of the second and third elements, the Panel finds the addition of such letter 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 Complainant provided evidence that shows that the Respondent is not only offering the Complainant’s products but also third-party products of other commercial origin competing with the Complainant’s products. The Panel also notes that the website to which the disputed domain name resolves uses the Complainant’s official product images and marketing materials without authorization. The Panel finds that the Respondent is not using the disputed domain name for a bona fide offering of goods.

Therefore, 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 has no doubt that the Respondent was aware of the Complainant and the Complainant’s trademark rights when registering the disputed domain name. The inclusion of the Complainant’s IQOS and TEREА trademarks in the disputed domain name is unlikely to be a coincidence. Furthermore, the Respondent began offering the Complainant’s IQOS and TEREА branded products immediately after registering the disputed domain name.

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.

From the record, it is evident that 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 and TEREА trademarks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

By reproducing the Complainant's registered trademarks in the disputed domain name and the title of the website, the Respondent is clearly suggesting to any Internet user visiting the website provided under the disputed domain name that the Complainant or an authorized dealer is the source of the website. This suggestion is further supported by the Respondent's use of the Complainant's official product images and marketing materials without authorization and the statement on the website indicating that the website belongs to an authorized dealer.

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 <iqosteream.com> be transferred to the Complainant.

*/Indrek Eelmets/*

**Indrek Eelmets**

Sole Panelist

Date: December 25, 2024