

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Rohan Mubbashir Khan
Case No. D2022-4582

1. The Parties

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

The Respondent is Rohan Mubbashir Khan, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqsepeti.net> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2022. On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 2022, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 2, 2022, 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 December 2, 2022.

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 December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on January 5, 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 a group of companies affiliated to Philip Morris International Inc. (jointly referred to as “PMI”) which is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”) PMI has developed a number of RRP products, one of which is a tobacco heating system called IQOS. The IQOS System was first launched in 2014. Today, the IQOS System is available in key cities in around 66 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:

- European Union Trade Mark No. 18226787 for IQ (word), registered on August 05, 2020;
- United Kingdom trademark No. UK00918226787 for IQ (word), registered on August 05, 2020;
- International trademark registration No. 1218246 for IQOS (word mark), registered on July 10, 2014, in International Classes 9, 11 and 34;
- International trademark registration No. 1326410 for HEETS (word mark), registered on July 19, 2016, in International Classes 9, 11 and 34;
- International trademark registration No. 1347235 for Q (figurative mark), registered on January 24, 2017, in International Classes 9, 11, 34, 35 and 42 (Annex 6 and 7 to the Complaint).

The Complainant is also the owner of the domain name <iqos.com>, registered on April 25, 1997, resolving to a website used by the Complainant to promote its IQOS products (Annex 5 to the Complaint).

The decisions *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#), regarding <iqsepeti.com>, and *Philip Morris Products S.A. v. Rohan mubbashir Khan*, WIPO Case No. [D2021-1314](#), regarding <heetsepeti.com>, concern the Complainant and the Respondent with almost an identical set of facts.

The disputed domain name was registered on April 4, 2022, and resolved to a website in Turkish promoting and offering for sale the Complainant’s IQOS System and competing products (Annex 8 to the Complaint); currently, the disputed domain name resolves to an inactive website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademarks IQOS and/or IQ in which the Complainant have rights as it contains the IQ mark in its entirety and includes a misspelling of the Complainant’s trademark IQOS with the mere addition of the Turkish non-distinctive and descriptive term “sepeti” (informally translated as “cart”) and the generic Top-Level Domain “.net”.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its trademarks IQ and/or IQOS. The Complainant further underlines that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name since

its 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, especially considering the Respondent is not an authorized distributor or reseller of the IQOS System and that the website to which the disputed domain name resolves also offers competing tobacco products and/or accessories of other commercial Origin.

The Complainant moreover states that it does not currently offer for sale its IQOS System in the territory of Türkiye, though the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System into the Turkish market.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent knew of the Complainant and its trademarks IQ and/or IQOS when registering the disputed domain name, since it started offering the Complainant's IQOS System immediately after registering the disputed domain name.

The Complainant also submits that the Respondent's purported recent involvement in the bad faith registration and use of the domain name (as highlighted in *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2021-1314](#) and *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#)) shows a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademarks.

Finally, the Complainant further states that the Respondent's use of a privacy protection service to hide its identity in the public Whois records constitutes a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

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

To make out a successful Complaint under the Policy all three conditions must be demonstrated by the Complainant.

A. Identical or Confusingly Similar

The Complainant submitted evidence of various trademark registrations, which clearly establishes rights in the trademarks IQ and IQOS (among others).

It has long been held that the generic Top-Level Domain ("gTLD") (*i.e.*, ".net") is generally disregarded when evaluating the confusing similarity of a disputed domain name.

Hence, in the present case the crucial question is whether the term "iqsepeti" is identical or confusingly similar to the Complainant's trademarks IQ or IQOS:

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. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

In the present case the Complainant's trademarks IQ and IQOS are recognizable within the disputed domain name, as it reproduces the trademark IQ in its entirety and regarding the IQOS trademark with the mere deletion of the letter "o". Moreover, as indicated in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a domain name which consists of a common misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element.

Regarding the addition of the term "sepeti" ("basket" in Turkish), as stated in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity.

Finally, in some specific cases a broader context may also support a finding of confusing similarity – this is the case at present:

- the disputed domain name resolved to website content trading off the Complainant's reputation by displaying an altered version of the Complainant's figurative trademark and the Complainant's product images, and advertising and offering for sale the Complainant's branded products which were not officially introduced to the Turkish market, along with competing products (Annex 8 to the Complaint);
- the Respondent has been involved in prior disputes involving the Complainant and its trademarks, including *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#), regarding <iqsepeti.com>, and *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2021-1314](#), regarding <heetsepeti.com>.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

In this regard, the nature of the disputed domain name, containing the Complainant's trademark IQ in its entirety and a misspelling of the IQOS trademark, together with the addition of the term "sepeti" ("basket" in Turkish), and the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner, as well as the Respondent not having rebutted these allegations, lead the Panel to the conclusion that the Complainant has made out an undisputed *prima facie* case so that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

This finding is also supported by the fact that the Respondent's use of the disputed domain name, as shown in the screenshots submitted as Annex 8 to the Complaint, 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.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)), both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

It is well-settled case law that the practice of typosquatting may in itself be evidence of a bad faith registration of a domain name (see, e.g., *Longs Drug Stores California, Inc. v. Shep Dog*, WIPO Case No. [D2004-1069](#); *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2014-0816](#)).

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Moreover, the Respondent must have been aware of the Complainant and its trademarks at the time of registration of the disputed domain name on November 19, 2022, since at this time the decisions in *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#) and *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2021-1314](#) between the parties were already decided.

Based on the evidence put forward by the Complainant especially in Annex 8, the Respondent also used the disputed domain name in bad faith. In light of the direction of the disputed domain name to a website displaying an altered version of the Complainant's figurative trademark and the Complainant's product images, and advertising and offering for sale the Complainant's branded products along with competing products, the Panel finds that the Respondent indeed intended to target the Complainant and its trademarks at the time of the registration of the disputed domain name and that, in doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

The Panel also finds that the Respondent's failure to file a Response to the Complaint and the circumstance that it was also involved in prior WIPO UDRP proceedings concerning domain names incorporating the Complainant's trademarks, i.e. *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2021-1314](#) and *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-1160](#) are additional circumstances evidencing the Respondent's bad faith.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and has been using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <iqsepeti.net> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: January 18, 2023