

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Burak, burak can aslan
Case No. D2023-0463

1. The Parties

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

The Respondents are Burak, Türkiye, and burak can aslan, Türkiye.

2. The Domain Name and Registrar

The disputed domain names <ilumaterea.com> and <ucuzheets.com> are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 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 February 3, 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”).

On February 2, 2022, the Center sent an email communication regarding the language of the proceeding in English and Turkish. The Complainant submitted a request to proceed in English on February 3, 2023. The Respondents did not comment on this.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint in both English and Turkish, and the proceedings commenced on February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondents

did not submit any formal response. Accordingly, the Center notified the Respondents' default on March 2, 2023. Upon this notification, the Center received informal communications from one of the Respondents on March 2 and 15, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 8, 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 Philip Morris International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns a large number of word and figurative ILUMA, TEREA, and HEETS trademark registrations around the globe, including in Türkiye, where the Respondents are reportedly located at (Annexes 6 and 7 to the Complaint).

According to the Complaint, the Complainant is, among others, the registered owner of the Turkish Trademark Registration No. 2019 128833 (registered on September 22, 2020) for ILUMA. The Complainant is further the registered owner of the Turkish Trademark Registration No. 2019 128867 (registered on September 17, 2020) for TEREA. Additionally, the Complainant is the registered owner of the International Trademark Registration No. 1326410 (registered on July 19, 2016) for HEETS, designating Türkiye and many other jurisdictions. All of these trademark registrations provide protection *inter alia* for electronic cigarettes and related services as protected in class 9 and/or 34 (Annex 6 to the Complaint).

The disputed domain name <ilumaterea.com> was registered on December 5, 2022.

The disputed domain name <ucuzheets.com> was registered on March 17, 2022.

The screenshots, as provided by the Complainant, show that the disputed domain names resolve to websites in Turkish language, which are used for purportedly offering various kinds of smoke-free products. While the website associated to <ilumaterea.com> offers smoke-free products of the Complainant only, the website associated to <ucuzheets.com> also provides offers for third party products (Annexes 8.1 and 8.2 to the Complaint). On both associated websites, the trademarks of the Complainant as well as its official product images are used without any visible disclaimer describing the (lack of) relationship between the Parties.

5. Parties' Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain names are confusingly similar to its ILUMA, TEREA, and HEETS trademarks.

Furthermore, the Complainant argues that the Respondents have no rights or legitimate interests in respect of the disputed domain names. It is rather argued that the disputed domain names falsely suggest that there is some official or authorized link between the Complainant and the Respondents.

Finally, it is argued that the Respondents have registered and is using the disputed domain names in bad faith. The Complainant believes that the Respondents must have been well aware of the Complainant's ILUMA, TEREA, and HEETS trademarks when registering the disputed domain names, particularly as the Complainant's trademarks and many of its genuine product images are prominently used on the websites

associated to the disputed domain names without authorization and any disclosure of the lack of relationship between the Complainant and the Respondents.

B. Respondent

The Respondents did not submit any formal response, however the Center received informal email communications in Turkish language on March 2 and 15, 2023. The identity of the sender of these email communications was not disclosed.

The sender of these informal communications mainly stated that he or she has not infringed the Complainant's trademark rights deliberately and that he or she is open for suggestions how to solve the dispute.

6. Discussion and Findings

6.1. Consolidation of Respondents

As neither the Policy nor the Rules explicitly provides provisions for the consolidation of claims against multiple respondents into a single administrative proceeding, UDRP panels generally apply the principles for consolidation as set out at section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Section 4.11.2 of the [WIPO Overview 3.0](#) states the following: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". See also, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

In this regard, previous UDRP panels particularly considered the following aspects in determining whether consolidation is appropriate: similarities in or relevant aspects of (i) the registrants' contact information, (ii) the content or layout of websites corresponding to the disputed domain names, (iii) whether the registrants are targeting a specific sector, and (iv) the relevant language/scripts of the disputed domain names.

In light of the criteria set out above, there are strong indications that all disputed domain names are under common control.

In view of the Panel, the Complainant has provided sufficient evidence that the Respondents are at least connected to each other. Due to seemingly false or incomplete contact information provided by the Respondents, it is even possible that both Respondents might actually be one and the same person as they share the same first name "Burak" and are both located in Türkiye. In addition, the website associated to <ilumaterea.com> provides for a hyperlink that directs Internet users to the other disputed domain name <ucuzheets.com>, which in view of the Panel strongly indicates that both disputed domain names are subject of common control. This assessment is further supported by the fact that both websites linked to the disputed domain names contain partly identical content and product images. The Panel additionally notes that both disputed domain names have the same Registrar, and were registered rather recently between March and December 2022.

The Panel concludes that the Respondents must be the same individual or at least have acted collaboratively and, hence, accepts that both disputed domain names are under common control. Based on this assessment, the Panel is convinced that in the present case the consolidation of multiple respondents is procedurally efficient, fair, and reasonable to all Parties. It is further noted that the Respondents have not raised any objection to the Complainant's consolidation request.

The Panel therefore, for the purpose of this decision, accepts the case to be dealt with in a consolidated Complaint and will refer, whenever appropriate, to the Respondents as “the Respondent” below.

6.2. Language of the Proceeding

The Panel determines in accordance with the Complainant’s request and the Rules, paragraph 11(a), that the language of the administrative proceeding shall be English. Although the language of the Registration Agreement for both disputed domain names is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection to the Complainant’s language request or respond to the Center’s communication about the language of the proceeding, even though communicated in Turkish and in English. The Panel notes that the Respondent was given the opportunity to file a Response in Turkish or English and that this opportunity was used by the Respondent merely for providing two informal email communications to the Center.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.3. 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 names are 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 names; and
- (iii) the disputed domain names have been registered and are 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

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the ILUMA, TERE, and HEETS trademarks, which are used and registered since several years.

The Panel further finds that the disputed domain names are confusingly similar to the Complainant’s trademarks.

The disputed domain name <ilumatere.com> fully comprises both, the ILUMA and the TERE trademarks of the Complainant without any other addition.

The disputed domain name <ucuzheets.com> comprises the Complainant's trademark HEETS in combination with the Turkish term "ucuz", which means "cheap" in English.

In light of section 1.8 of the [WIPO Overview 3.0](#), the Panel notes that the combination of two trademarks or the addition of the term "ucuz" does not affect the recognizability of the Complainant's trademarks within the disputed domain names, and hence, does not serve to avoid a finding of confusing similarity between the disputed domain names and the Complainant's ILUMA, TEREА and HEETS trademarks.

In this regard, the Panel also notes that the generic Top-Level Domain ".com" may, as a general principle, be disregarded when assessing identity or confusing similarity between a domain name and a trademark, see [WIPO Overview 3.0](#), section 1.11.1.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain names.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain names according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's ILUMA, TEREА, and/or HEETS trademarks in a confusingly similar way within the disputed domain names.

There is also no indication in the current record that the Respondent is commonly known by the just recently registered disputed domain names. In the absence of a formal response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain names.

In this regard, the Panel is particularly convinced that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Okі Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Okі Data*") and thus is not entitled to use the disputed domain names accordingly. The criteria as set forth in *Okі Data* are apparently not fulfilled in the present case. The Panel notes that the websites, which are associated to the disputed domain names do 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 associated websites are operated by the Complainant or at least with its authorization. In addition, the Panel notes that the website at the disputed domain name <ucuzheets.com> purportedly offers for sale products of third party origin, as well.

Further, this assessment is supported by the inherently misleading nature of the disputed domain names, which in view of the Panel carry a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). The Panel is even convinced that the Respondent intended such implied affiliation in

order to mislead customers with regard to the origin of the products offered on the websites associated to the disputed domain names. In view of the Panel, this results in an illicit use that *per se* cannot confer rights or legitimate interests upon the Respondent, see [WIPO Overview 3.0](#), section 2.13. The Panel finds that all this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain names in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademarks in mind when registering the disputed domain names.

In view of the Panel, the Respondent has registered the disputed domain names solely for the purpose of creating an association with the Complainant and its smoke-free products. After having reviewed the Complainant's screenshots of the websites associated to the disputed domain names (Annexes 8.1 and 8.2 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own website. The Panel particularly notes that the Respondent has not published a visible disclaimer on its websites to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the prominent use of official product images of the Complainant and its other registered trademarks on the associated websites as well as the inherently misleading nature of the disputed domain names is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its websites.

In addition, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have substantially responded.

Finally, the Respondent has seemingly provided false or at least incomplete contact information when registering the disputed domain names since the couriers sent by the Center seem to have been undelivered, and did not even disclose its true identity in its informal email communications to the Center, which is in view of the Panel an additional indication of bad faith.

Taking all these facts of the case into consideration, the Panel concludes that the disputed domain names were registered and are being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, 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 names, <ilumaterea.com> and <ucuzheets.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: March 22, 2023