

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Bayrak Cihan
Case No. D2023-4451

1. The Parties

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

The Respondent is Bayrak Cihan, Türkiye.

2. The Domain Name and Registrar

The Disputed Domain Name <iqsigaravip.com> (the “Disputed Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 30, 2023, 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 (On behalf of iqsigaravip.com OWNER c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 October 31, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on December 6, 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 a world renowned company specialized in the selling of tobacco and smoke-free products since 1972.

The Complainant is the owner of several registered trademarks incorporating the term “iqos” to promote its unique tobacco heating system called IQOS, and IQ trademarks including (the “IQ Trademarks” and “IQOS Trademarks”):

- The European Union wordmark IQ No. 018226787 registered on August 5, 2020, for products and services in classes 9 and 34;
- The United Kingdom wordmark IQ No. UK00918226787 registered on August 5, 2020, for products and services in classes 9 and 34;
- The International wordmark IQOS No. 1218246 registered on July 10, 2014, for products and services in classes 9, 11 and 34;
- the Turkish wordmark IQOS ILUMA No. 2019 128850, registered on November 06, 2020, for products and services in classes 9 and 34;
- the International semifigurative mark IQOS No. 1338099, registered on November 22, 2016, for services in class 35.

The Disputed Domain Name was registered on August 12, 2023, and at the time of the Complainant resolved to an online shop apparently selling and offering the Complainant’s products commercialized under the IQ and IQOS Trademarks, as well as competing third party products. At the time of the decision, the Disputed Domain Name resolves to an inactive website.

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 a trademark in which the Complainant has rights. The Complainant argues that it has registered its IQ Trademarks in numerous jurisdictions including Türkiye. The Complainant considers that the Disputed Domain Name identically incorporates its IQ Trademarks. The Complainant submits that the addition of the term “sigara” which informally translates into “cigarette” and of the term “vip” to the IQ Trademarks in the Disputed Domain Name does not prevent a finding of confusing similarity. The Complainant asserts that the Respondent has attempted to employ an obvious or intentional misspelling of its IQOS Trademarks by omitting the letter “o” and this omission is not sufficient to prevent a finding of confusing similarity. The Complainant considers that any Internet user visiting the website linked to the Disputed Domain Name will expect to find a website commercially linked to the Complainant since it features without any authorization whatsoever the Complainant’s products sold under the IQ and IQOS Trademarks.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant explains that it has never licensed or otherwise permitted the Respondent to use any of its IQ or IQOS Trademarks to register the Disputed Domain Name. The Complainant considers that the Respondent is not making a legitimate noncommercial or fair use of the

Disputed Domain Name and that on the contrary the Respondent's behavior is evidence of its intent to obtain an unfair commercial gain and to tarnish the Complainant's trademarks. The Complainant submits that the Respondent is not making a *bona fide* offering of goods and service since it does not only sell the Complainant's trademarks goods but also other competing tobacco products and it does not disclose its relationship with the Complainant. The Complainant highlights that the Respondent is suggesting its affiliation with the Complainant since its IQ and IQOS Trademarks are reproduced on several occasions on the website linked to the Disputed Domain Name. The Complainant finally submits that the illegitimacy of the Respondent's use of the Disputed Domain Name is further shown by the fact that the Complainant does not offer its IQOS products in Türkiye at all.

Finally, the Complainant asserts that the Disputed Domain Name was registered and is used in bad faith by the Respondent. The Complainant considers that this bad faith is illustrated by the use of the Disputed Domain Name by the Respondent since it uses the Disputed Domain Name to offer and sell products commercialized under the IQ and IQOS Trademarks. The Complainant considers that the intent of the Respondent when registering the Disputed Domain Name was to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's registered IQ and IQOS Trademarks as to the source, sponsorship, affiliation, or endorsement of its website. The Complainant stands that the Respondent is clearly suggesting to any Internet user visiting its website linked to the Disputed Domain Name that the Complainant is at the origin of the website which is not the case. Finally, the Complainant submits that the Respondent has already, in the past, registered a domain name incorporating its IQOS Trademark without authorization.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the IQOS and IQ Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's IQ mark is recognizable 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.

Moreover, the Panel notes that "IQ" could be perceived as an abbreviated version of IQOS, and that the website at the Disputed Domain Name includes the titles "IQOSVIP" with "IQOS" being written in a color different to the one used for the term "VIP". The Panel finds that the Complainant's Disputed Domain Name

is confusingly similar to the Complainant's IQOS Trademarks as well, with the content of the website at the Disputed Domain Name affirming the Panel's finding of confusing similarity.

Although the addition of other terms here, "sigara" and "vip" 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.

Based on the available record, 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.

Indeed, it appears that the Respondent has not received any authorization to use the IQ or IQOS Trademarks in any manner, including for the registration of the Disputed Domain Name.

Moreover, the Respondent was using the Disputed Domain Name to apparently sell, without any authorization, products of the Complainant sold under the IQ and IQOS Trademarks. The Respondent is also apparently selling products from the Complainant's competitors. The Respondent is making an extensive use of the Complainant's IQ and IQOS Trademarks on its website while trying to pass off as the Complainant or someone affiliated with it. Accordingly, the Panel finds that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("Oki Data") and thus is not entitled to use the Disputed Domain Name.

Finally, at the time of the decision the Disputed Domain Name resolves to an inactive webpage. It appears from the non-use of the Disputed Domain Name that the Respondent is not using the Disputed Domain Name with a *bona fide* offering of goods or services nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain.

Based on the available record, 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 notes that the Respondent has registered the Disputed Domain Name well after the registration of the IQ and IQOS Trademarks. The Panel notes that the Respondent must have had the Complainant and its IQ and IQOS Trademarks in mind when 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.

Indeed, the Panel also notes that even if at the time of the decision the Disputed Domain Name resolves to an inactive website, at the time of the Complaint it was apparently used to sell, without its authorization, the Complainant's products and competing third party products. This use of the Disputed Domain Name is evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's IQ and IQOS Trademarks as to the source, sponsorship affiliation or endorsement.

Panels have also found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <iqsigaravip.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: December 20, 2023