

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. dsfdsfdf dsfadsfdf, dfsdsfd  
Case No. D2022-0014

### 1. The Parties

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

The Respondent is dsfdsfdf dsfadsfdf, dfsdsfd, Turkey.

### 2. The Domain Name and Registrar

The disputed domain name <iqosonlinefiyat.com> (the “Domain Name”) 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 January 4, 2022. On January 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint<sup>1</sup>. The Complainant filed an amended Complaint on January 12, 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 January 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2022.

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<sup>1</sup> At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Dawn Osborne as the sole panelist in this matter on February 9, 2022. 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 group of companies famous for tobacco products across the world.

The Complainant is the owner, *inter alia*, of the following trade marks for smoking products:

- the word mark IQOS registered as International Registration No. 1218246 on July 10, 2014;
- the logo mark IQOS registered as International Registration No.1329691 on August 10, 2016;
- the word mark HEETS registered as International registration No. 1326410 on July 19, 2016;
- the word mark THIS CHANGES EVERYTHING registered as International Registration No. 1343294 on December 12, 2016;
- the word mark ILUMA registered as Turkish trade mark registration No. 2019 128833 on September 22, 2020 (with priority of September 16, 2019); and
  
- the word mark IQOS ILUMA No. 2019 128850 registered as Turkish trade mark registration on November 6, 2020 (with priority of September 16, 2019).

The Domain Name registered in 2021 has been used in connection with a Turkish website selling e-cigarette products which use the Complainant's IQOS word mark and logo and the Complainant's THIS CHANGES EVERYTHING mark in its masthead and within its tab interface. The Complainant's HEETS, ILUMA and IQOS ILUMA marks are used prominently on the website together with official images belonging to the Complainant of its products which are all reproduced on the website without permission. The website includes no information regarding the identity of the provider of the website, which is only identified as "IQOS ELEKTRONİK SİGARA - HEETS" and does not state that there is no connection with the Complainant as owner of the IQOS and HEETS trade marks.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the marks IQOS (word mark and logo), IQOS ILUMA, ILUMA, HEETS and THIS CHANGES EVERYTHING registered as summarised above.

The Domain Name registered in 2021 is confusingly similar to the Complainant's IQOS trade mark. incorporating it in its entirety adding only the non-distinctive and descriptive words "online" and the Turkish word "fiyat" meaning price in English and the generic Top-Level Domain ("gTLD"), ".com" which do not prevent confusing similarity.

The Respondent does not have any rights or legitimate interests in the Domain Name, is not commonly known by it and is not authorised by the Complainant.

The Domain Name has been used for a Turkish website using the Complainant's IQOS word and logo marks and the Complainant's THIS CHANGES EVERYTHING mark in its masthead and its tab interface. The Complainant's HEETS, ILUMA and IQOS ILUMA marks are use prominently on the website together with images belonging to the Complainant of the Complainant's products which are all used without permission.

The website includes no information regarding the identity of its provider which is only identified as “IQOS ELEKTRONİK SİGARA - HEETS”, being a name which includes the Complainant’s registered IQOS and HEETS trade marks (without authorization) and gives the false impression of an official commercial relationship between the website and the Complainant. The website does not acknowledge the Complainant as the real owner of the Complainant’s trade marks, leaving the Internet user under the false impression that the online shop provided under the website is that of the Complainant or that it is connected to the Complainant or one of its official distributors, which it is not. The IQOS system is not currently sold in Turkey.

The use made by the Respondent of the Domain Name is registration and use in bad faith misleading Internet users for commercial gain and shows the Respondent is aware of the Complainant’s trade marks, its business and products.

The use by the Respondent of a privacy service to hide its identity is also suggestive of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Domain Name consists of the Complainant’s IQOS word mark (which is registered, *inter alia*, as an international trade mark since 2014), the word “online”, the Turkish word “fiyat” meaning price in English and the gTLD, “.com”.

Previous UDRP panels have found confusing similarity when a respondent merely adds words and a gTLD to a Complainant’s mark. Since the Complainant’s trademark is recognizable within the Domain Name, the addition of the word “online” and the Turkish word “fiyat” meaning price in English and the gTLD “.com” does not prevent confusing similarity between the Domain Name and the Complainant’s IQOS word mark.

Accordingly, the Panel holds that the Domain Name is confusingly similar to the Complainant’s IQOS registered word mark.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

### **B. Rights or Legitimate Interests**

The Complainant has not authorised the use of its marks. There is no evidence or reason to suggest that the Respondent listed as dsfdsfdf dsfadsfdf, dsfdsfd in the Domain Name register details is commonly known by the Domain Name. The use of the Domain Name is commercial and so is not legitimate noncommercial fair use.

The web site attached to the Domain Name uses the Complainant’s IQOS word and logo marks and the Complainant’s THIS CHANGES EVERYTHING mark in its masthead and in its tab interface and the Complainant’s HEETS, ILUMA and IQOS ILUMA marks and official images belonging to the Complainant to offer the Complainant’s e-cigarette goods. The website includes no information regarding the identity of the provider of the website, which is only identified as “IQOS ELEKTRONİK SİGARA - HEETS” on the website, being a name which similarly includes the Complainant’s registered IQOS and HEETS trade marks (without authorization) and gives the false impression of an official commercial relationship between the website and the Complainant. The website does not make it clear that there is no commercial connection with the Complainant. The Panel finds this use is confusing. As such it cannot amount to the *bona fide* offering of goods and services.

The Respondent has not answered this Complaint or presented any information to challenge the *prima facie* case made out by the Complainant that the use of the Domain Name is not legitimate.

As such the Panel finds that the Respondent does not have rights or legitimate interests in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

### **C. Registered and Used in Bad Faith**

In the opinion of the Panel the use made of the Domain Name in relation to the Respondent's website is confusing and disruptive in that visitors to the website might reasonably believe it is connected to or approved by the Complainant as it offers e-cigarette products under the Complainant's IQOS word and logo marks and the Complainant's THIS CHANGES EVERYTHING word mark in its masthead and in its tab interface and uses the Complainant's HEETS, ILUMA and IQOS ILUMA marks and the Complainant's official images without permission. The Complainant's IQOS and HEETS word marks are also used without permission in the name of the provider of the web site without explaining there is no commercial connection with the Complainant. All this gives the overall impression to Internet users that the web site attached to the Domain Name has a connection with the Complainant as true owner of the rights used. The reference to actual products of the Complainant and the use of its marks on the website also shows that the Respondent has actual knowledge of the Complainant's business, products and rights.

Accordingly, the Panel holds 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 trade marks as to the source, sponsorship, affiliation or endorsement of the web site, also likely to disrupt the business of the Complainant.

As such, the Panelist believes that the Complainant has made out its case that the Domain Name was registered and is being used in bad faith and has satisfied the third limb 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 Domain Name, <iqosonlinefiyat.com> be transferred to the Complainant.

*/Dawn Osborne/*

**Dawn Osborne**

Sole Panelist

Date: February 22, 2022