

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Turgut Savli
Case No. D2022-1161

1. The Parties

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

The Respondent is Turgut Savli, Turkey.

2. The Domain Name and Registrar

The disputed domain name <iqosyetkiliservis.com> is registered with Isimtescil Bilişim A.Ş. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 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 April 8, 2022.

The Center sent an email communication in English and Turkish to the parties on April 6, 2022, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on April 8, 2022. The Respondent did not comment on the language of the proceeding.

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 April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2022. The Respondent sent an email communication to the Center

on April 22, 2022, but did not submit any formal Response. The Complainant requested the suspension of the proceedings on April 28, 2022, on which date the Center informed the Parties that the proceeding was suspended until May 28, 2022. Further to the Complainant's request, the proceeding was reinstated on May 11, 2022. The Center notified the parties that it would proceed to panel appointment on May 19, 2022.

The Center appointed Selma Ünlü as the sole panelist in this matter on May 24, 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 a part of the group companies affiliated to Philip Morris International Inc., a leading international tobacco company which sells products in approximately 180 countries. The Complainant has developed a controlled heating device branded IQOS. Presently, the Complainant's IQOS products are available in key cities in around 71 markets across the world. As a result of a USD 9 billion investment and extensive international sales and marketing efforts, around 19.1 million relevant consumers are using the IQOS products worldwide.

The Complainant owns registrations for the IQOS trademark. The Complainant is the owner of the registered International trademark No.1218246 for IQOS (word), registered on July 10, 2014; the International trademark No.1338099 for IQOS (device), registered on November 22, 2016; the International trademark No.1461017 for IQOS (device), registered on January 18, 2019; the International trademark No.1557546 for IQOS (device), registered on August 27, 2020; and the International trademark No.1329691 for IQOS (device), registered on August 10, 2016.

The disputed domain name is linked to an online shop allegedly offering repair and maintenance services for the Complainant's IQOS system as well as for competing third party products of other commercial origin. The Complainant's IQOS trademark and logo are being used at the top of the website related to the disputed domain name. The website promotes a Facebook page and also includes the Complainant's IQOS trademark. The website and the mentioned Facebook page also appear to use the Complainant's official product images.

The disputed domain name was registered on January 24, 2022.

5. Parties' Contentions

A. Complainant

Pursuant to paragraph 4(i) of the Policy, the Complainant requests the transfer of the disputed domain name to the Complainant. The Complainant submits the grounds for these proceedings listed in paragraph 4(a) of the Policy.

In summary, the Complainant contends the following:

Confusingly Similar

The Complainant states that it owns registered IQOS trademarks for several jurisdictions including but not limited to Turkey.

The Complainant alleges that the disputed domain name <iqosyetkiliservis.com> is confusingly similar to its IQOS trademark registrations, since the disputed domain name reproduces the Complainant's IQOS trademark in its entirety alongside with the non-distinctive and descriptive terms "yetkili" and "servis" (which means "authorized" and "service"). Further, the Complainant alleges that the Top-Level Domain ("TLD") is

disregarded when applying the confusing similarity test. Accordingly, it is argued that any Internet user when visiting the website associated with the disputed domain name will reasonably expect to find a website commercially linked to the owner of the IQOS trademark.

Rights or Legitimate Interests

The Complainant alleges that the Respondent is not and has never been one of the Complainant's distributors, nor it is authorized to use the Complainant's mark. The Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not known under the name "iqos" either.

Therefore, the Complainant argues that the Respondent registered the disputed domain name to gain commercial profit. Since the disputed domain name contains the Complainant's registered trademark identically together with the non-distinctive and descriptive term "yetkiliservis", it will mislead the consumers and tarnish the trademarks owned by the Complainant.

It is also stated that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent's behavior shows clear intent to obtain an unfair commercial gain as the Respondent is not an authorized distributor of the Complainant and does not fulfill the requirements establishing a use of the disputed domain name in connection with a *bona fide* offering of goods or services. Further, the Respondent is also selling competing tobacco products of other commercial origin.

The Complainant also alleges that the illegitimacy of the Respondent's use of the disputed domain name is clear as the Complainant does not currently offer for sale its IQOS branded products in Turkey while the Respondent is using the registered trademarks of the Complainant on the top left side of the website as well as the products visuals which are subjected to copyright protection. Further, the Respondent also claims copyright for those visuals. The Complainant also alleges that the website creates the false impression that the Complainant has officially introduced its IQOS products into the Turkish market through a distributor.

Registered and Used in Bad Faith

The Complainant indicates that the disputed domain name has been registered and used in bad faith.

The Complainant claims that the Respondent must have been aware of the Complainant and its trademarks at the time that it chose the Complainant's trademark and registered the disputed domain name to attract the customers of the Complainant.

The Complainant alleges that the Respondent registered and used the disputed domain name with the intention to attract for commercial gain Internet users to the website to which the disputed domain name resolves, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website. The Complainant also alleges that the display of the Complainant's registered IQOS trademark at the top left of the website associated with the disputed domain name clearly suggests it belongs to the Complainant or is an official affiliated dealer of the Complainant.

The Complainant states that the Respondent's recent involvement in a previous UDRP case ascertaining the bad faith registration and use of the <iqostamir.com> domain name also shows the Respondent's bad faith.

The Complainant alleges that the Respondent is using a privacy protection service to hide its true identity and such act constitutes bad faith.

B. Respondent

The Respondent did not file a formal Response however sent an email communication to the Center in Turkish stating that the Complainant's logo and images are used on the website connected to the disputed

domain name to repair IQOS devices, but the products are not sold on the website. The Respondent also indicated that they used a similar logo unknowingly and that necessary changes on the website can be made depending on the Complainant's reply.

6. Discussion and Findings

6.1. 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 proceedings shall be English. Although the language of the Registration Agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or respond to the Center's communication about the language of the proceedings even though communicated in Turkish and in English.

The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondent. Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. 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 and on the basis of the Complaint where no Response has been submitted.

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 name is identical or confusingly similar to the trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the Complainant has the burden of proving that all these requirements are fulfilled.

A. Identical or Confusingly Similar

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of several international registrations of the IQOS trademark.

The Panel finds that the addition of the terms "yetkil" and "servis" (meaning "authorized" and "service") within the disputed domain name does not prevent a finding of confusingly similarity.

In similar previous UDRP cases (see, e.g., *Sanofi-Aventis v. Gideon Kimbrell*, WIPO Case No. [D2010-1559](#); *Turkcell Iletisim Hizmetleri A.S. v. Vural Kavak*, WIPO Case No. [D2010-0010](#); *Greenbrier IA, Inc. v. Moniker Privacy Services/Jim Lyons*, WIPO Case No. [D2010-0017](#) and *Zodiac Marine & Pool, Avon Inflatables Ltd and Zodiac of North America Inc. v. Mr. Tim Green*, WIPO Case No. [D2010-0024](#)), the respective UDRP panels found that the addition of other terms does not prevent a finding of confusing similarity between a trademark and a domain name incorporating said trademark.

The Panel finds that the Complainant's has trademark rights and that the disputed domain name is confusingly similar to the Complainant's IQOS trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy states that a respondent may establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [the Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [the Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The burden of proof is on the Complainant to demonstrate a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a *prima facie* case, then the Respondent may, by, *inter alia*, showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

In light of the evidence submitted in this case the Panel finds that the Complainant has established a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name for the purposes of the Policy.

The Complainant has not granted the Respondent any right or license to use the IQOS trademarks and there is no evidence that the Respondent is commonly known by the disputed domain name.

Consequently, in the absence of any formal response or compelling submissions by the Respondent, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the IQOS trademark in the disputed domain name.

Moreover, the Panel finds that the composition of the disputed domain name is such that it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Respondent has taken no steps to clarify the (lack of) relationship between the Complainant and the Respondent on the website at the disputed domain name.

Hence, as the Complainant has made out its *prima facie* case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, the Complainant must show that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

By consideration of the foregoing, the Panel is of the opinion that, due to the long-standing rights of the Complainant in the trademark IQOS and the targeted use of the website at the disputed domain name, the Respondent was aware of the Complainant and its IQOS trademark at the time of registration of the disputed domain name. See e.g., *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#), the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration, due to the nature of the disputed domain name.

This intention has also been shown by using the registered trademark of the Complainant at the top left side of the website and the offering of technical service for the products which are not yet available to the Turkish market. The Panel is of the opinion that Internet users may fall into the false impression that the website to which the disputed domain name resolves, is the Complainant's official website or related, associated or sponsored by the Complainant.

Furthermore, as previously noted, the composition of the disputed domain name is such that it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Therefore, in light of the above-mentioned circumstances of the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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, <iqosyetkiliservis.com> be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: June 7, 2022