

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Mehmet Balcı  
Case No. D2022-2232

### **1. The Parties**

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

The Respondent is Mehmet Balcı, Türkiye.

### **2. The Domain Name and Registrar**

The disputed domain name <iostamiri.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2022. On June 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 June 21, 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 June 22, 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 June 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2022. The Respondent sent several informal communication emails on June 24, July 6, and July 21, 2022, however did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on July 18, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on July 21, 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 International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS trademark registrations around the world, including in Türkiye, where the Respondent appears to be located (Annex 7 to the Complaint). According to the Complaint, the Complainant is, among others, the registered owner of the International Trademark Registration No. 1218246 (registered on July 10, 2014) and No. 1329691 (registered on August 10, 2016) for IQOS, covering trademark protection, *inter alia*, for electronic cigarettes as covered in classes 9 and 11 (Annex 6 to the Complaint).

The Respondent is reportedly an individual from Türkiye.

The disputed domain name was registered on August 6, 2021.

The screenshots, as provided by the Complainant (Annex 8 to the Complaint), show that the disputed domain name resolves to a website in the Turkish language, which is used for offering repair and maintenance services for IQOS smoke-free heaters. On the website, the IQOS word mark, the Complainant's official logo and a number of its official product images are prominently 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 name is confusingly similar to its IQOS trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It is rather argued that the disputed domain name falsely suggests that there is some official or authorized link between the Complainant and the Respondent.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant argues that the Respondent must have been well aware of the Complainant's IQOS trademark when registering the disputed domain name, particularly as the Respondent prominently uses the Complainant's IQOS trademark and logo as well as a number of official product images on the website associated to the disputed domain name, without authorization and any disclosure of the lack of relationship between the Complainant and the Respondent.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. In his informal communications to the Center, the Respondent stated, *inter alia*, "I do not accept this case. [...] There is a product that I sell and there is no product in my domain name." and "I am an electronics repairman and I repair all electronic devices." Further, the Respondent stated that the disputed domain name does not comprise the Complainant's trademark.

## 6. Discussion and Findings

According to paragraphs 14 and 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 formal 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 a 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 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the IQOS mark by virtue of various trademark registrations, including trademark registrations covering protection in Türkiye, where the Respondent is reportedly located.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered IQOS trademark. In the Panel's view, the disputed domain name contains a phonetically and visually similar misspelling of the Complainant's IQOS trademark. A domain name which consists of an intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark. The assessment of a confusing similarity is further supported by the content of the website associated to the disputed domain name.

As stated at section 1.15 of the [WIPO Overview 3.0](#), the content of a website associated to a disputed domain name is usually disregarded for the assessment of confusing similarity under the first element, but may in exceptional circumstances be considered by a panel, if it appears *prima facie* that the Respondent seeks to target a trademark through the disputed domain name.

In the present case, the content of the website associated to the disputed domain name is clearly showing the Complainant's IQOS trademark and products and, hence, *prima facie* justifies the Panel's conclusion for the purpose of the first element that the Respondent is targeting the IQOS trademark, having registered the disputed domain name due to its confusing similarity.

As further stated at 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 generally not prevent a finding of confusing similarity. In the present case, the mere addition of the Turkish term "tamiri" (which means "repair" in the English language) does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's IQOS trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement 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 name.

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 name 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 name 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 IQOS trademark in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. 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 name.

In this regard, the Panel is convinced that the Respondent cannot be assessed as a legitimate repair service 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 accordingly. The criteria as set forth in *Oki Data* are apparently not fulfilled in the present case. The Panel particularly notes that the website which is associated to the disputed domain name does not adequately disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant. Quite the opposite, the prominent use of the Complainant's IQOS trademark and logo, as well as official product images, is in view of the Panel, sufficient evidence that the Respondent intentionally tries to create the false impression that the Respondent might be an official and authorized repair service for the Complainant's products in Türkiye. This is supported by the fact that the Respondent does not disclose any company name or other sufficiently clear indication as to the provider of its alleged repair services. In the Panel's view, this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

Bearing all this in mind, the Panel finds that the Respondent is not making a *bona fide* offering of services under the disputed domain name nor a legitimate noncommercial or fair use.

Consequently, the Panel finds that the Complainant has 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 name in bad faith.

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

It appears that the Respondent has registered the disputed domain name 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 associated website (Annex 8 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to his own website, by deliberately creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of his website.

The Panel additionally notes that the Respondent used a privacy service when creating the disputed domain name. Although privacy services are legitimate in many cases, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.

The Panel concludes that the disputed domain name was registered and is 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 name <iostamiri.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: August 2, 2022