

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Contact Privacy Inc. Customer 7151571251 /
Memet Kaya, ELESKA internet Hizmetleri Ticaret ve Limited sirketi
Case No. D2022-2711

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 7151571251, Canada / Memet Kaya, ELESKA internet Hizmetleri Ticaret ve Limited sirketi, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <antalyaiqosheets.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 July 26, 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 in English on July 27, 2022.

On July 26, 2022, the Center sent an email communication in both English and Turkish to the Parties regarding the language of the proceeding. On July 27, 2022, the Complainant confirmed its request that English be the language of the proceeding. 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 in both English and Turkish of the Complaint, and the proceedings commenced on August 2, 2022. In accordance

with the Rules, paragraph 5, the due date for Response was August 22, 2022. The Respondent sent two informal email communications to the Center on August 4 and 6, 2022, respectively, however the Respondent did not submit any formal response. Accordingly, the Center notified the commencement of Panel appointment on August 23, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 25, 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 and HEETS trademark registrations around the world, including in Türkiye, where the Respondent appears to be located. According to the Complaint, the Complainant is, *inter alia*, the registered owner of the International Trademark Registration No. 1218246 for IQOS (registered on July 10, 2014) and the registered owner of the International Trademark Registration No. 1326410 for HEETS (registered on July 19, 2016), both of them designating Türkiye and covering protection, *inter alia*, for electronic cigarettes and related products (Annexes 6 and 7 to the Complaint).

The Respondent is reportedly located in Türkiye.

The disputed domain name was registered on June 29, 2022.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in the Turkish language, which is used for purportedly offering for sale various kinds of IQOS and HEETS smoke-free products. On the associated website, the IQOS and HEETS word and figurative trademarks as well as product images of the Complainant are prominently used without any visible disclaimer describing the (lack of) relationship between the Parties (Annex 8 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain name is confusingly similar to its IQOS and HEETS trademarks.

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 and HEETS trademarks when registering the disputed domain name, particularly as the Respondent prominently uses the Complainant's word and figurative IQOS and HEETS trademarks on the website linked to the disputed domain name and its product images without authorization and any disclosure of the lack of relationship between the Complainant and the Respondent.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Respondent rather sent two informal email communications on August 4 and 6, 2022, respectively. In their first informal communication,

the Respondent briefly stated that they are a web design and software company, the disputed domain name belongs to one of their customers and they are not the owner of the disputed domain name. In the latter one, the Respondent states that they have informed their customer about the proceedings.

6. Discussion and Findings

6.1. Procedural Issues

A. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the Registration Agreement of the disputed domain name is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in Turkish and to request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceeding, even though communicated in Turkish and English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish or English and that this opportunity has been used by the Respondent only for informal email communications with the Center in Turkish, as indicated above. The Panel is familiar with both Turkish and English.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by the language of the proceeding in English. Nevertheless, the Panel will accept the submissions from both Parties in Turkish and English, and will render the decision in English.

B. Identity of the Respondent

As mentioned above, the Respondent stated that they are not the owner of the disputed domain name and the disputed domain name belongs to one of their customers. The Respondent did not disclose their customer information to the Center but provided a screenshot of WhatsApp conversation to prove that they have informed their custom about the current proceedings.

Paragraph 1 of the Rules defines respondent as "the holder of a domain-name registration against which a complaint is initiated". In this regard, the Registrar has confirmed that the Respondent is the registrant of the disputed domain name.

In view of the above, the Panel will rely on the confirmation by the Registrar that the Respondent is the registrant of the disputed domain name and will proceed on this basis. The Panel notes that in any case, even if the registrant of the disputed domain name is different from the Respondent, the substantive issues to be considered are essentially the same, and all references to the Respondent in this decision shall be construed to include the actual registrant of the disputed domain name.

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.

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 marks IQOS and HEETS by virtue of various trademark registrations, including trademark registrations covering protection in Türkiye, where the Respondent is located.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered IQOS and HEETS trademarks, as it fully incorporates both marks. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the additions of other terms would generally not prevent a finding of confusing similarity. The mere addition of the city name "Antalya", does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's IQOS and HEETS trademarks.

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 trademarks IQOS and HEETS 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 substantive 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 particularly convinced 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 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 linked to the disputed domain name does not adequately disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and authorized distributor for the Complainant's products in Antalya, Türkiye. This assessment is further supported by the nature of the disputed domain name which carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In the view of the Panel, 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 name in bad faith.

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

It even appears that the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant, in particular with its smoke-free products. After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (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 its own website. The Panel notes that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. The design of the website linked to the disputed domain name, the use of product images of the Complainant, and the prominent use of the Complainant's word and figurative IQOS and HEETS trademarks is sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with the Complainant's IQOS and HEETS trademarks as to the source, sponsorship, affiliation or endorsement of their website.

The Panel therefore 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 <antalyaiqosheets.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 8, 2022