

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mehmet Balç
Case No. D2022-2882

1. The Parties

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

The Respondent is Mehmet Balç, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqosteknik.com> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 6, 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 August 8, 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 August 10, 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 August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. The Respondent did not submit a formal response, but sent email communications to the Center on August 8, 2022, August 9, 2022, and August 10, 2022. On August 12, 2022, Complainant requested that the proceedings be suspended. On August 15, 2022, the Center suspended the administrative proceeding until September 14, 2022. On August 22, 2022, the Complainant requested that the proceedings be reinstated. The proceedings were reinstated on August 22, 2022, and the Respondent was informed that the updated due date for filing a Response was

September 6, 2022. On September 7, 2022, the Center informed the parties that it will proceed to panel appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 14, 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 affiliated to Philip Morris International Inc., which is a leading international tobacco company with products sold in about 180 countries. The Complainant's group of companies has developed the IQOS system – a heating device into which specially designed tobacco products under the brand names HEETS and HEATSTICKS are inserted and heated to generate a nicotine-containing aerosol. The IQOS system was first launched in Japan in 2014 and has 20% share of the market in this country. The IQOS system is now available in key cities in 71 countries through official IQOS stores and websites and selected authorized distributors and retailers and has about 19.1 million users.

The Complainant is the owner of the following trademark registrations for the signs IQOS (the "IQOS trademark"):

- the International trademark IQOS with registration No. 1218246, registered on July 10, 2014 for goods in International Classes 9, 11 and 34;
- the International trademark IQOS with registration No. 1338099, registered on November 22, 2016 for services in International Class 35; and
- International trademark IQOS with registration No. 1461017, registered on January 18, 2019 for goods in International Classes 9 and 34.

The disputed domain name was registered on July 19, 2022. It resolves to a Turkish language website offering repair and maintenance services for the Complainant's IQOS products.

5. Parties' Contentions

A. Complainant

The Complainant submits that the Respondent is the same person, or is connected to the same person, who was the respondent in *Philip Morris Products S.A. v. Emin Abbasov, EMKA Aksesuar Ltd. Sti.*, WIPO Case No. [D2021-0817](#), because the websites at the respective domain names have very similar design, prominently use the IQOS trademark, use similar copyright notices, and indicate the same telephone number and physical address.

The Complainant submits that the disputed domain name is confusingly similar to its IQOS trademark, because it reproduces the trademark in its entirety, in combination with the Turkish dictionary word "teknik" (translated in English as "technical").

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has not licensed or otherwise permitted the Respondent to use the IQOS trademark or to register a domain name incorporating it. The Complainant states that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, and adds that the Respondent's behaviour shows an intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant. The Complainant submits that

the Respondent is not an authorized distributor, reseller or repair services operator of the IQOS System, and the website at the disputed domain name does not meet the requirements for a *bona fide* offering of goods. According to the Complainant, the disputed domain name suggests an affiliation with the Complainant and its IQOS trademark, and the owner of the website at the disputed domain name, prominently and without authorization presents the Complainant's registered IQOS trademark appearing at the top left of the website, as well as using the Complainant's registered logo within the tab interface of the website under the disputed domain name, where relevant consumers will usually expect to find the name of the online shop and/or the name of the website provider. The website uses the Complainant's official product images without authorization, while at the same time falsely claiming copyright in this material. According to the Complainant, this illegitimate and false claim of rights in the Complainant's official copyright protected material further supports the false impression, that the website under the disputed domain name is endorsed by the Complainant, which it is not. The Complainant adds that the website under the disputed domain name includes no information regarding the identity of its provider, which is only identified as "Iqos Tamircisi" / "Iqos Teknik Servis" (translated in English as "Iqos Technical Service"). The Complainant maintains that as it does not endorse or authorise third parties, such as repair services operators, Internet users will be misled regarding the relationship between the Respondent and the Complainant, and will believe the website under the disputed domain name to be an endorsed repair store operator.

The Complainant adds that it does not currently offer for sale its IQOS System in Türkiye, and the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System into the Turkish market or has authorised the Respondent to provide IQOS System repair services.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent knew of the Complainant's IQOS trademark when registering the disputed domain name. The Complainant notes that the Respondent started offering repair services for the Complainant's IQOS System immediately after registering of the disputed domain name. The Complainant adds that the term IQOS is purely an imaginative term and unique to the Complainant, and is not commonly used to refer to tobacco products or electronic devices.

According to the Complainant, the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the website under the disputed domain name by creating a likelihood of confusion with the Complainant's registered IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith. The Complainant states that by reproducing the Complainant's registered trademark in the disputed domain name and the title of the website under the disputed domain name, the Respondent is suggesting to Internet users visiting the website at the disputed domain name that the source of the website is the Complainant or an authorised repair services operator of the Complainant. The Complainant adds that this suggestion is supported by the Respondent's use of the Complainant's official product images accompanied by a copyright notice claiming the copyright for the website under the disputed domain name and its contents.

The Complainant submits that the Respondent's registration and use of the disputed domain name shows a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademark.

B. Respondent

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

In its informal communications to the Center the Respondent notes that it does not understand the dispute and states that the disputed domain name has already been closed or transferred to the Complainant.

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence and has thus established its rights in the IQOS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) portion of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD portion of the disputed domain name.

The relevant part of the disputed domain name is therefore the second-level domain portion “iqosteknik”. It consists of the elements “iqos” and “teknik”. The “iqos” element is identical to the IQOS trademark, while the “teknik” element is a Turkish dictionary word. Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the IQOS trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While 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 often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that the Respondent has not been authorized by the Complainant to use the IQOS trademark or to provide repair services for IQOS products, and that the Respondent is not carrying out a *bona fide* use of the disputed domain name. According to the Complainant, the Respondent uses the disputed domain name for a website that offers repair services for the Complainant’s IQOS products, although the Complainant does not sell its IQOS products in Türkiye, displays the Complainant’s IQOS trademark and official product images in the website without authorization by the Complainant and without disclosing the lack of relationship between the Parties. Thus, 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 submitted a formal Response and has not alleged that it has rights or legitimate interests in the disputed domain name and has not disputed the Complainant’s allegations in this

proceeding.

The disputed domain name is confusingly similar to the IQOS trademark and the evidence in the case shows that it resolves to a website that offers repair and maintenance services for the Complainant's IQOS products and displays the IQOS trademark and product images without identifying the supplier of the offered goods and without disclosing the lack of relationship between the Parties. As summarized in section 2.8.1 of [WIPO Overview 3.0](#), panels under the Policy have recognized that resellers and distributors using a domain name containing the complainant's trademark to undertake sales of the complainant's goods may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name, but only if they comply with certain cumulative requirements, among which are the requirements that the reseller's or distributor's website must accurately and prominently disclose its relationship with the trademark holder. This requirement has not been complied with in the present case.

In view of the above and in the absence of any denial by the Respondent of it, the Panel is satisfied that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's IQOS trademark, has registered and used the disputed domain name in an attempt to exploit the trademark's goodwill to attract Internet users to the Respondent's website which offers repair services for the Complainant's products without disclosing the lack of relationship between the Parties and without authorization of this conduct by the Complainant. To the Panel, such conduct does not appear to be legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

As discussed above, the disputed domain name fully incorporates the IQOS trademark in combination with the element “teknik” which is not distinctive. The Respondent does not deny that it is linked to a website that offers repair and maintenance services for the Complainant's IQOS products and displays the IQOS trademark and product images, without authorization by the Complainant, and without including a disclaimer for the lack of relationship with the Complainant.

Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the IQOS trademark in an attempt to attract traffic to the disputed domain name by confusing Internet users that they are reaching

an official online location offering authorized repair services for the Complainant's IQOS products for commercial gain. This satisfies the Panel that the Respondent has registered and is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and used in bad faith.

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 <iqosteknik.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 28, 2022