

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Cihan ATALAY  
Case No. D2023-0127

### 1. The Parties

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

The Respondent is Cihan ATALAY, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <ilumaturkiye.com> is registered with ODTÜ Geliştirme Vakfı Bilgi Teknolojileri Sanayi Ve Ticaret Anonim Şirketi (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2023, 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 January 12, 2023, 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 January 12, 2023.

The Center sent an email communication in English and Turkish to the parties on January 12, 2023, 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 January 12, 2023. 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 January 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 10, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on February 17, 2023. 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 a large number of word and figurative ILUMA trademark registrations around the globe, including in Türkiye, where the Respondent is reportedly located at. According to the Complaint, the Complainant is, *inter alia*, the registered owner of the Turkish Trademark Registration No. 2019 128833 (registered on September 22, 2020) for ILUMA, covering protection for electronic cigarettes and related services as protected in class 9 and 34 (Annex 6 to the Complaint).

The disputed domain name was registered on November 5, 2022.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in Turkish, and partly English language, which is used for offering various kinds of smoke-free products of the Complainant (Annex 8 to the Complaint). On this website, the ILUMA trademark of the Complainant as well as other widely known trademarks and various of the Complainant's official product images are 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 ILUMA 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 believes that the Respondent must have been well aware of the Complainant's ILUMA trademark when registering the disputed domain name, particularly as the Complainant's ILUMA trademark and many of its other trademarks as well as its genuine product images are prominently used 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.

## 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 proceeding 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 proceeding in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Complaint or respond to the Center's communication about the language of the proceeding, even though communicated in Turkish and in English. The Panel 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.

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](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

#### A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark ILUMA by virtue of various trademark registrations, including in Türkiye, where the Respondent is reportedly located at (Annex 6 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered ILUMA trademark, as it fully incorporates the trademark. As 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 would generally not prevent a finding of confusing similarity. The mere addition of the country indication "Türkiye" does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's ILUMA 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 trademark ILUMA 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 just recently registered disputed domain name. In the absence of a 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 *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Okidata*") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Okidata* are apparently not fulfilled in the present case. The Panel notes that the website, which is linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the website associated to the disputed domain name is operated by the Complainant or at least with its authorization. This assessment is supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). The Panel is even convinced that the Respondent intended such implied affiliation in order to mislead customers with regard to the origin of the products offered on the website associated to the disputed domain name. In view of the Panel, this results in an illicit use that *per se* cannot confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13. The Panel finds that all this takes the Respondent out of the *Okidata* 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 trademark in mind when registering the disputed domain name.

In view of the Panel, 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 website associated 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 particularly notes that the Respondent has not published a visible disclaimer on its website to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the prominent use of official product images of the Complainant and many of its other registered trademarks on the associated website as well as the inherently misleading nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

Also, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have probably responded.

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 <ilumaturkiye.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: March 3, 2023