

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Turan Altunoglu, TURAN ALTUNOGLU
Case No. D2023-0310

1. The Parties

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

The Respondent is Turan Altunoglu, TURAN ALTUNOGLU, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iqosheetsperpa.com> is registered with Nics Telekomunikasyon A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 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 26, 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 27, 2023.

The Center sent an email communication in English and Turkish to the parties on January 26, 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 names is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on January 27, 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 February 1, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was February 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 22, 2023.

The Center appointed Dilek Ustun Ekdial as the sole panelist in this matter on February 28, 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 Philip Morris Products S.A. is a company, which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI"). PMI is the leading international tobacco company, with products sold in approximately 180 countries. PMI's brand portfolio contains brands like MARLBORO, one of the most selling cigarette brands since 1972.

PMI is known for innovating across its brand portfolio. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs", which PMI defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), PMI has developed a number of RRP products. One of these RRP products developed and sold by PMI is a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System").

For its new innovative smoke-free products the Complainant owns a large portfolio of well-known trademarks. Among them, but by no means limited to, are the following trademark registrations:

- International Registration IQOS (word) No. 1218246, registered on July 10, 2014, designating Antigua and Barbuda, Albania, Armenia, Bosnia and Herzegovina, Bahrain, Bonaire, Sint Eustatius and Saba, Belarus, Colombia, Cuba, Curaçao, Algeria, Egypt, European Union, Georgia, Israel, India, Iceland, Kyrgyzstan, Kazakhstan, Morocco, Monaco, Republic of Moldova, Montenegro, North Macedonia, Mongolia, New Zealand, Oman, Philippines, Serbia, Sint Maarten (Dutch part), Tunisia, Türkiye, Ukraine, Viet Nam;
- International Registration HEETS (word/device) No. 1328679, registered on July 20, 2016, designating Albania, Armenia, Australia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Botswana, China, Colombia, Curaçao, Egypt, United States of America ("USA"), North Macedonia, Russian Federation, Philippines, Georgia, Iceland, Israel, Japan, Kenya, Kyrgyzstan, Liechtenstein, Morocco, Mexico, Monaco, Montenegro, Mozambique, Norway, New Zealand, African Intellectual Property Organization ("OAPI"), Republic of Korea, Republic of Moldova, Serbia, Singapore, Oman, Turkmenistan, Türkiye, European Union, Ukraine, Uzbekistan, Viet Nam;
- International Registration HEETS (word) No. 1326410, registered on July 19, 2016, designating Albania, Armenia, Australia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Botswana, China, Colombia, Curaçao, Egypt, USA, North Macedonia, Russian Federation, Philippines, Georgia, Iceland, Israel, Japan, Kenya, Kyrgyzstan, Liechtenstein, Morocco, Mexico, Monaco, Montenegro, Mozambique, Norway, New Zealand, Republic of Korea, Republic of Moldova, Serbia, Singapore, Oman, Turkmenistan, Türkiye, European Union, Ukraine, Uzbekistan, Viet Nam;
- International Registration IQOS (word/device) No. 1461017, registered on January 18, 2019, designating Afghanistan, Antigua and Barbuda, Albania, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Brunei Darussalam, Bonaire, Saint Eustatius and Saba, Belarus, Colombia, Cuba, Curaçao, Algeria, Egypt, Georgia, Indonesia, Israel, India, Iceland, Kyrgyzstan Cambodia, Kazakhstan, Lao People's Democratic Republic, Liechtenstein, Morocco, Monaco, Republic of Moldova, Montenegro, North Macedonia, Mongolia, Mexico, Mozambique, Norway, New Zealand,

OAPI, Oman, Philippines, Serbia, Russian Federation, Singapore, San Marino, Syrian Arab Republic, Thailand, Turkmenistan, Tunisia, Türkiye, Ukraine, Uzbekistan, Viet Nam;

- International Registration IQOS (word/device) No. 1329691, registered on August 10, 2016, designating Albania, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Botswana, Belarus, China, Colombia, Curaçao, Algeria, Egypt, European Union, Georgia, Israel, India, Iceland, Japan, Kenya, Kyrgyzstan, Republic of Korea, Liechtenstein, Morocco, Monaco, Republic of Moldova, Montenegro, North Macedonia, Mexico, Mozambique, Norway, New Zealand, OAPI, Sultanate of Oman, Philippines, Serbia, Russian Federation, Singapore, Turkmenistan, Türkiye, Ukraine, USA, Uzbekistan, Viet Nam;
- International Registration HEETS (word/device) No. 1328679, registered on July 20, 2016, designating Albania, Armenia, Australia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Botswana, China, Colombia, Curaçao, Algeria, Egypt, USA, North Macedonia, Russian Federation, Philippines, Georgia, Iceland, Israel, Japan, Kenya, Kyrgyzstan, Liechtenstein, Morocco, Mexico, Monaco, Montenegro, Mozambique, Norway, New Zealand, OAPI, Republic of Korea, Republic of Moldova, Serbia, Singapore, Oman, Turkmenistan, Türkiye, European Union, Ukraine, Uzbekistan, Viet Nam;
- International Registration  (device) No. 1331054, registered on October 11, 2016, designating Albania, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Botswana, Belarus, China, Colombia, Curaçao, Algeria, Egypt, European Union, Georgia, Israel, India, Iceland, Japan, Kenya, Kyrgyzstan, Republic of Korea, Liechtenstein, Morocco, Monaco, Republic of Moldova, Montenegro, North Macedonia, Mexico, Mozambique, Norway, New Zealand, OAPI, Sultanate of Oman, Philippines, Serbia, Russian Federation, Singapore, Turkmenistan, Türkiye, Ukraine, USA, Uzbekistan, Viet Nam.

The disputed domain name was registered on December 8, 2021.

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 various kinds of smoke-free products of the Complainant. On the website, the IQOS and HEETS trademarks of the Complainant and some of its official product images are used without any visible disclaimer describing the (lack of) relationship between the Parties. There are also other third party products of other commercial origin purportedly offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant's arguments are as follows:

The Complainant is the registered owner of the HEETS and IQOS trademarks in numerous jurisdictions, including, but not limited to Türkiye. It is well accepted that the test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name to assess whether the mark is recognizable within the disputed domain name. (See Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").)

The similarity test of the first UDRP element serves as a standing requirement, building the connection between the disputed domain name and the trademark rights on which a dispute is based. A domain name is confusingly similar to a trademark, when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name and therefore will likely be associated with the respective trademark (see *Philip Morris USA Inc. v. Steven Scully, J&S Auto Repair*, WIPO Case No. [D2015-1001](#); *Hertz System, Inc. v. Kwan-ming Lee*, WIPO Case No. [D2009-1165](#)). Thus, it cannot be questioned that the disputed domain name is confusingly similar to the HEETS and IQOS trademark

registrations of the Complainant. The disputed domain name identically adopts the Complainant's HEETS and IQOS trademarks.

It is further established that the addition of merely generic, descriptive, or geographical wording to a trademark in a domain name would normally be insufficient in itself to avoid a finding of confusing similarity under the first element of the UDRP (see *Compagnie Générale des Etablissements Michelin v. PrivacyDotLink Customer 1197652 / Alex Hvorost*, WIPO Case No. [D2016-1923](#); *AB Electrolux v. ID Shield Service, Domain ID Shield Service CO., Limited / Maksim, zanussi-shop.com*, WIPO Case No. [D2015-2027](#)).

The disputed domain name reproduces the IQOS and HEETS trademarks in their entirety, in addition to the non-distinctive addition, namely "perpa".

Any Internet user when visiting a website provided under the disputed domain name will reasonably expect to find a website commercially linked to the owner of the IQOS and HEETS trademarks. This unlawful association is exacerbated by the use of the Complainant's official product images without the Complainant's authorization.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks.

- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of the Complainant.
- The Respondent is not an authorized reseller of the IQOS System.
- Neither the Complainant nor its affiliates offer for sale in Türkiye, a product under the Complainant's trademarks, and hence the offering on the online shop at the website resolving from the disputed domain name is further misleading, in that it suggests to consumers that they can legitimately purchase this product in Türkiye.
- The Respondent's use of the disputed domain name shows that the Respondent knew of the Complainant's trademarks when registering the disputed domain name.
- The Respondent's use of the disputed domain name shows that the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the Website, by creating a likelihood of confusion with the Complainant's IQOS and HEETS trademarks 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 pursuant to paragraph 4(b)(iv) of the Policy.

Additionally, the Complainant argues that; the Respondent is not only using the Complainant's IQOS and HEETS trademarks for the purposes of offering for sale the IQOS System, but also for purposes of offering for sale third party products of other commercial origin. Such abusive use of the Complainant's IQOS and HEETS trademarks for purposes of promoting competing products is a clear-cut trademark infringement and constitutes clear evidence of the Respondent's bad faith.

Finally, the fact that the Respondent is using a privacy protection service to hide its true identity may in itself constitute a factor indicating bad faith (see [WIPO Overview 3.0](#), section 3.6).

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue: Language of Proceeding

Paragraph 11(a) of the Rules provides that: "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding." The Complainant has requested English to be the language of the proceeding. The Panel determines in accordance with the Rules, paragraph 11(a), that the language of this proceeding shall be English for the following reasons:

- The Respondent did not reply to the Center communications in both English and Turkish about the language of the proceeding;
- The Respondent did not reply to the Complainant's contentions after being notified of the Complaint in both English and Turkish;
- The website at the disputed domain name contains some words in English language;
- The Complainant is unable to communicate in Turkish. Requiring the Complainant to submit documents in Turkish would lead to delay of the proceeding and cause the Complainant to incur additional translation expenses.

Under these circumstances, the Panel determines English to be the language of this proceeding.

6.2. Substantive Issues

Paragraph 15(a) of the Rules requires the Panel to decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Under paragraph 4(a) of the Policy, the Complainant bears the burden of showing:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant owns trademark rights for the IQOS and the HEETS marks. The disputed domain name contains the Complainant's trademarks IQOS and HEETS with the district name "perpa" which is in Istanbul, Türkiye.

The addition of this word does not avoid a finding of confusing similarity between the disputed domain name and the Complainant's marks. The extension ".com" may be disregarded when examining the identity or confusing similarity between the Complainant's IQOS and HEETS trademarks and the disputed domain name.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademarks in which the Complainant has rights, satisfying the condition of the Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Respondent has not provided any evidence of the conditions specified in paragraph 4(c) of the Policy, or any other circumstances giving rise to rights or legitimate interests in the disputed domain name.

It is clear that the Respondent has not demonstrated any *bona fide* offering of goods and services by its use of the disputed domain name. Nor has the Respondent shown that it has been commonly known by the

disputed domain name. Rather, the evidence of the Complainant suggests that the Respondent has used the disputed domain name in an attempt to trade off the goodwill associated with the Complainant's trademark.

The Complainant also showed, *inter alia*, that the Respondent has neither a license nor any other permission to use the Complainant's trademark in the disputed domain name or otherwise. The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent has failed to demonstrate such rights or legitimate interests or otherwise rebut the Complainant's arguments.

In addition, the Respondent, prominently and without authorization, presents the Complainant's registered HEETS trademark appearing at the top left of the website, as well as uses the Complainant's registered IQOS and HEETS trademarks within the tab interface of the website, where relevant consumers will usually expect to find the name of the online shop and/or the name of the website provider.

The website further uses the Complainant's official product images without authorization, while at the same time falsely claiming copyright in this material. This illegitimate and false claim of rights in the Complainant's official copyright protected material further supports the false impression, that the website is endorsed by the Complainant, which it is not.

The website includes no information regarding the identity of the provider of the website, which is only identified as "HEETS Elektronik Sigara", being a name which similarly includes the Complainant's registered HEETS trademark (without authorization) and further serves to perpetuate the false impression of an official commercial relationship between the website and the Complainant.

The Respondent is not only offering the Complainant's products but also competing heated tobacco products and/or accessories of other known and unknown commercial origins. This is, in itself, is sufficient to exclude rights or legitimate interests in the form of a *bona fide* offering of goods or services.

A reseller or distributor can be making a bona fide offering of goods or services and thus have a right or legitimate interest in a domain name only if the following cumulative requirements are met (*Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), [WIPO Overview 3.0](#), section 2.8.1): (i) the respondent must actually be offering the goods or services at issue; (ii) the respondent must use the site to sell only the trademarked goods or services; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark. However, as stated above, these conditions are not met in the present case.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel is of the opinion that when the Respondent registered the disputed domain name it knew that IQOS and HEETS were the trademarks of the Complainant, and that the Respondent registered the disputed domain name in bad faith.

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 linked to the disputed domain name (annexed 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.

Furthermore, the evidence on the record provided by the Complainant with respect to the Respondent's use of the disputed domain name indicates that the Respondent has used the disputed domain name to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between its website and the Complainant.

Accordingly, the Panel finds that the disputed domain name has been registered and is being 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, <iqosheetsperpa.com>, be transferred to the Complainant.

/Dilek Ustun Ekdial/

Dilek Ustun Ekdial

Sole Panelist

Date: March 15, 2023