

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mert Yazici
Case No. D2023-2415

1. The Parties

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

The Respondent is Mert Yazici, Türkiye.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 7, 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 June 12, 2023.

The Center sent an email communication in English and Turkish to the parties on June 7, 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 June 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 June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 10, 2023.


The Center appointed Ezgi Baklaci Gülkökar as the sole panelist in this matter on July 13, 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 a part of the group of companies affiliated to Philip Morris International Inc. ("PMI"). The Complainant provides goods such as cigarettes and smoke-free products. The Complainant's products are sold in 180 markets and the smoke-free products are sold in 71 markets.

The Complainant's trademark IQOS is used for a precisely controlled heating device into which specially designed tobacco sticks are inserted and heated to generate a flavourful nicotine-containing aerosol. Until now, IQOS has been almost exclusively distributed through PMI's official IQOS-branded stores and websites and selected authorized distributors and retailers.

The Complainant owns several trademark registrations such as,

- Andorra Registration IQ (word) No. 40687 registered on November 05, 2019, in classes 09 and 34;
- United Arab Emirates IQ (word) No. 322648 registered on December 18, 2019, in class 34;
- Turkish Registration IQOS ILUMA (word) No. 2019 128850 registered on November 6, 2020, in classes 09 and 34;
- International Registration IQOS (word) No. 1218246 registered on July 10, 2014, in classes 09, 11, and 34;
- International Registration **IQOS** (device) No. 1338099 registered on November 22, 2016, in class 35;
- International Registration **IQOS** (device) No. 1461017 registered on January 18, 2019, in classes 09 and 34;
- International Registration  (device) No. 1347235 registered on January 24, 2017, in classes 09, 11, 34, 35, and 42.

Türkiye is one of the designated countries for the above-mentioned international registrations and registrations are verified by the Panel via open sources and relevant registries.

According to the WhoIs records, Registrar verification, and evidence submitted to the case file (Annex-1), the disputed domain name is registered on June 23, 2022. The website provided under the disputed domain name is not accessible on the date of the decision, however at the time of submitting the Complaint, the disputed domain name resolved to a website, which was used for a web store allegedly offering the Complainant's IQOS products, as well as competing third party products of other commercial origin.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

Identical or confusingly similar

The Complainant argues that the disputed domain name identically adopts the Complainant's IQ Trademarks and/or a mark highly similar/phonetically almost identical to the Complainant's IQOS Trademarks. The Complainant also argues that the obvious or intentional misspelling by omission of letters "os" and the addition of descriptive term, "magazasi", in present case are not sufficient to eliminate such similarity. The disputed domain name contains obvious and sufficiently recognizable aspects of the IQOS Trademarks. The Complainant notes that the previous panels also considered the Complainant's reputation as a supporting ground for assessment of first element. Considering the use of the website, the Complainant argues that the Respondent registered the disputed domain name in the belief that it is confusingly similar to the Complainant's IQ and IQOS trademarks.

Rights or legitimate interests

The Complainant argues that the disputed domain name appears to be directed to an online store where goods featuring the IQOS system and other competing goods are sold or offered for sale. The Complainant contends that the IQOS System is not sold in Türkiye by the time of submitting the Complaint, but the language and the currency used have been indicating that the website is directed to Türkiye. Therefore, the Complainant concludes that, the website is acting as if it is an official online retailer of the Complainant's IQOS system in Turkey. The Complainant submits that the Respondent is not known or in any way related to the Complainant or any PMI affiliate and is not authorized to use the IQ and/or IQOS Trademarks and that there is no official distribution and license relationship between the Complainant and the Respondent.

The disputed domain name was registered and used in bad faith

The Complainant claims that the disputed domain name was registered and is being used in bad faith; the Respondent is aware of the Complainant's IQ and IQOS Trademarks. According to the Complainant's submission, the terms "iq" and/or "iqos" are purely imaginative and unique to the Complainant and they are not commonly used in the relevant product group. The Complainant argues that the registration and use in bad faith, under paragraph 4(b)(iv) of the Policy are present in the current dispute by referring to the explanations provided under second element. The Complainant further indicates that using a privacy protection service to hide the Respondent's true identity may in itself constitute a factor indicating bad faith by referencing WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)", section 3.6) and the cases referenced therein.

B. Respondent

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

6. Discussion and Findings

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 the trademarks or service marks 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.

The burden of proof of each element is on the Complainant.

6.1. Procedural Issues: Language of the Proceedings

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 Registrar confirmed that the Registration Agreement for the disputed domain name is in Turkish.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin script, the content at the disputed domain name includes some English words or phrases, and the Registrar appears to operate in English and offers the registration agreement in English, too.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition.

The Panel observes that despite the Center having sent an email regarding the language of the proceeding and the notification of the Complaint in both Turkish and English, the Respondent has not commented on the language of the proceeding or expressed any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Turkish would create an undue burden and delay whereas accepting it as filed without translation does not cause prejudice to either Party. Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a response in Turkish, but none was filed.

6.2. Substantive Issues:

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights on the IQ and IQOS marks.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7). The disputed domain name incorporates the IQ mark. (*Philip Morris Products S.A. v. Shahadat Hossain*, WIPO Case No. [D2023-1869](#))

When 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 ([WIPO Overview 3.0](#), section 1.8). Therefore, the addition of the word “magazasi” does not eliminate the confusing similarity between the trademarks, since the Complainant’s trademarks are easily recognized in the disputed domain name (*Philip Morris Products S.A. v. Rohan mubbashir Khan*, WIPO Case No. [D2022-2629](#), *Philip Morris Products S.A. v. Mehmet Cam*, WIPO Case No. [D2020-0557](#)). While note a replacement for the side-by-side comparison, the Panel exceptionally takes note of the content at the disputed domain name, which clearly targets the Complainant, which confirms the confusing similarity of the disputed domain name to the Complainant’s IQ and IQOS marks. [WIPO Overview 3.0](#), section 1.15.

Following the previous UDRP panels’ decisions and section 1.11 of the [WIPO Overview 3.0](#), it is accepted that the applicable generic Top-Level-Domain (“gTLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

In the light of the above, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's trademarks and the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving a respondent that it 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 ([WIPO Overview 3.0](#), section 2.1) (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel notes that there is no evidence showing that the Respondent holds any rights for the term "iq". The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's trademark IQ or IQOS. The website the disputed domain resolves to is in Turkish language, and the price of goods indicated as Turkish currency. The Panel notes that the Respondent offers not only products of the Complainant but also competing third party products of other commercial origin. Additionally, the Panel notes that the website the disputed domain resolves to does not disclose the relationship, or 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 Türkiye. Consequently, the Panel is in the view that the Respondent cannot be considered as having legitimate interests in the disputed domain name (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) and also concludes that the use cannot amount to *bona fide* offering of the goods. Previous UDRP panels evaluated such similar circumstances may not be qualified as *bona fide* nor legitimate noncommercial or fair use of a domain name under the Policy (*Philip Morris Products S.A. v. Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu*, WIPO Case No. [D2023-0837](#)).

Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Under article 4(b)(iv) of the Policy, one of the non-exhaustive examples of bad faith include where a respondent has used a domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Previous UDRP panels also considered several additional factors for the registration in bad faith, including the nature of the domain name and a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the domain name. The Panel concludes that the selection of the disputed domain name and the images and goods displayed on the website indicates that the Respondent is aware of the Complainant's previous rights on the IQ and IQOS trademarks. (*Rolls-Royce PLC v. Ragnar Kallaste*, WIPO Case No. [D2014-2218](#)). Given the alleged offering of the Complainant's, and competitor's, products, it is clear that the above-cited paragraph 4(b)(iv) of the Policy is applicable here and thus the Panel finds both registration and use in bad faith by the Respondent.

Besides the general applicable principles, the Panel notes that previous UDRP panels concluded registration and use in bad faith of domain names in several similar cases filed by the Complainant. These cases include circumstances where the domain names included the IQ or IQOS trademark in their entirety; the

registered trademarks of the Complainant and/or images of the Complainant's products were used on the respective websites, the websites offered competing third party products, the disclaimers on the websites (if any) did not accurately and prominently disclose the Respondent's relationship with the Complainant (amongst others see *Philip Morris Products S.A. v. Shahadat Hossain*, WIPO Case No. [D2023-1869](#))

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name has been registered and is being used in bad faith by the Respondent.

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, <iqmagazasi.com>, be transferred to the Complainant.

/Ezgi Baklaci Gülkökar/

Ezgi Baklaci Gülkökar

Sole Panelist

Date: July 27, 2023