

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mahir Sultanov

Case No. D2023-3707

1. The Parties

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

The Respondent is Mahir Sultanov, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <aykoturkiye.net> is registered with Isimtescil Bilisim A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 4, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 8, 2023.

The Center sent an email communication in English and Turkish to the parties on September 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 September 8, 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 September 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 6, 2023.

The Center appointed Ahmet Akgüloglu as the sole panelist in this matter on October 11, 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 part of the group companies in affiliation with Philip Morris International Inc., which is known for their international tobacco and smoke-free products.

The Complainant owns several International trademark registrations such as 1218246 numbered IQOS trademark, registered on July 10, 2014, 1326410 numbered HEETS trademark registered on July 19, 2016, 1461017 numbered IQOS trademark registered on January 18, 2019, 1557546 numbered IQOS trademark registered on August 27, 2020, 1329691 numbered IQOS trademark registered on August 10, 2016, and several others as presented in Annex 7 to the Complaint.

The disputed domain name was registered by the Respondent on November 17, 2021. The screenshots provided by the Complainant show that the disputed domain name resolves to a website in the Turkish language where the Complainant's registered trademarks are used and official pictures regarding the Complainant's products are being presented. The website linked to the disputed domain name also contains the phrase "IQOS Türkiye Satış ve Teknik Servis Merkezi", which is Turkish and translates to "IQOS Türkiye Sales and Technical Service Center" in English Language. Additionally, at the bottom of the website, there is a cookie banner stating that the website is not in association with any IQOS trademarks.

5. Parties' Contentions

A. Complainant

- (a) The disputed domain name is identical or confusingly similar to a trademark or services mark in which the Complainant has rights.

The Complainant argued that the disputed domain name is confusingly similar to the Complainant's registered trademark IQOS. The Complainant submits that the term "aykos" in the disputed domain name is an obvious or intentional misspelling of the IQOS trademark and that the Complainant's mark is sufficiently recognizable within the disputed domain name.

- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant confirms that the Respondent has no rights or legitimate interests in the disputed domain name and asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy, in order to demonstrate rights or legitimate interests in the disputed domain name.

The Complainant reaffirms that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy and is not a licensee of the Complainant, nor has the Respondent been otherwise authorized by the Complainant to make any use of the Complainant's IQOS trademark in a domain name or otherwise.

The Complainant claims that the Respondent cannot legitimately claim to be commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The Complainant states that there is no evidence of the Respondent having acquired or applied for any trademark registrations for “aykos” as reflected in the disputed domain name to the best of the Complainant’s knowledge.

The Complainant denotes that the disputed domain name falsely suggests that there is some official or authorized connection between the Complainant and the Respondent. The Complainant also suggested that the statement “IQOS Türkiye Satış Mağazası” in the disputed website, which translates to “IQOS Türkiye Sales Store” in English, is aimed to lead consumers to believe there is an affiliation between the website and the Complainant. The Complainant underlines that the company’s products are not presented in Türkiye and are not in the market yet, while the Respondent’s website explicitly points otherwise. Therefore, the Complainant claims that the Respondent is misleading the consumers to believe the website under the disputed domain name is an official distributor or repair store of the Complainant.

Based on these reasonings, the Complainant asserts that it has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production therefore shifts to the Respondent to come forward with evidence to rebut the Complainant’s case against it and the Complainant may be deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy in the absence of such evidence.

- (c) The disputed domain name was registered and is being used in bad faith.

The Complainant argues that the term “iqos” is purely an imaginative term and unique to the Complainant. The term is not commonly referred to or used to describe tobacco goods. Therefore, the Respondent must have been aware of the Complainant’s trademarks, and it is not a coincidence to use exact terms with the Complainant’s official advertising visuals and wording on the website linked to the disputed domain name. In addition, the Complainant further asserts that the disclaimer stating that the website is not in association with the IQOS trademark at the very bottom of the website is not presented in a clear and prominent manner. Lastly, it is brought out by the Complainant that the Respondent is the same person, who was the respondent in another UDRP complaint by the Complainant under *Philip Morris Products S.A. v. Domain Admin, Isimtescil.net / Whoisprotection.biz / Mahir Sultanov*, WIPO Case No. [D2021-3543](#), in respect to the domain name <aykosturkiye.com> which further proves the Respondent’s awareness of the Complainant’s IQOS trademarks. Considering the mentioned elements of the Complaint, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith.

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. The Respondent has not raised any objections to the Complaint or responded to the Center’s communication about the language of the proceeding, even though it was communicated in the two languages, Turkish and English. The Panel observes that the Respondent was provided with an option to respond in Turkish. However, preferred not to do so. Therefore, the Panel believes that it would be inappropriate, pursuant to the circumstances of this case, to conduct the proceeding in Turkish and request a Turkish translation of the Complaint.

Subsequently, the Panel is convinced that the Complainant's request for language proceedings is in order and that the Respondent will not be prejudiced by a decision provided in English.

6.2. Substantive Issues

The Complainant must meet the following conditions to succeed in regards to the administrative proceeding, according to paragraph 4(a) of the Policy:

- (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;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel notes the guidance at paragraph 14(a) of the Rules: "In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint."

A. Identical or Confusingly Similar

The Complainant has provided sufficient evidence regarding its rights in the IQOS trademark.

The disputed domain name is composed of phrases "aykos" and "turkiye".

It is observed by the Panel that phrase "aykos" is created by the pronunciation of the IQOS trademark in Turkish. Therefore, it is accepted by the Panel that the phrase "aykos" in the disputed domain name is phonetically identical and hence, a confusingly similar misspelling of the Complainant's IQOS trademark (see *Carrefour v. Ernest Medina*, WIPO Case No. [D2016-0688](#)). The Panel's evaluation is also supported by the fact that the Complainant's IQOS device trademarks and advertisement components are being presented as content within the website associated with the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.15.

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. Considering that the Complainant's trademark is recognizable within the disputed domain name, the phrase "turkiye" does not prevent a finding of confusing similarity (see *Steven Madden, Ltd. v. Domain Administrator, Privacyguardian.org, Jonas Weber, Gottschalk Ursula, Christina Kappel, Whoisprotection.cc, Domain Admin, Engel Ralph*, WIPO Case No. [D2021-0090](#), *Petróleo Brasileiro S.A. – Petrobras*, WIPO Case No. [D2013-2064](#)).

The Panel disregarded the generic Top-Level Domain ("gTLD") since it is viewed as a standard registration requirement and is typically disregarded under the first element similarity test (see [WIPO Overview 3.0](#), section 1.11.) (see *Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

For the reasons explained above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks as required by the Policy 4(a)(i).

B. Rights or Legitimate Interests

The evidence presented demonstrates that the Complainant has rights to the multiple IQOS trademark registrations used in the disputed domain name. There is no evidence that the Respondent has any authorization, license, or permit to use the Complainant's registered trademarks.

Even though the overall burden of proof is on the Complainant in a proceeding under the Policy (see section 2.1 of [WIPO Overview 3.0](#)), panels recognize the often impossible task of “proving a negative”. Hence, where a Complainant presents a *prima facie* case that the Respondent lacks rights or legitimate interests in a domain name, the burden of production transfers to the Respondent in order to come forward with relevant documentation, which proves the Respondent’s rights or legitimate interests (see *Ritual Beverage Company LLC v. Tom Tom, Tom Tom S. DE R.L. DE C.V.*, WIPO Case No. [D2021-3643](#)).

Considering that the Respondent did not provide any evidence regarding its rights or legitimate interests on the disputed domain name or any trademark registrations containing “aykos” term, it was made clear to the Panel that the Respondent has failed to rebut the *prima facie* case and provide evidence of any Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with any *bona fide* offering of goods or services.

In this regard, the Panel is convinced that the Respondent cannot be assessed as a legitimate dealer for the Complainant’s products and thus is not entitled to use the disputed domain name accordingly (see *Oki Data Americas, Inc. v ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”). The Panel evaluates the criteria to claim a legitimate interest set forth in the *Oki Data* is not met in this particular case. The Panel notes that the website in association with the disputed domain name suggests affiliation with the Complainant also considering the explanation stating “IQOS Turkey Sales Store”. The small disclaimer banner at the very bottom of the associated website does not prevent the implied affiliation and does not sufficiently disclose the lack of the relationship between the Parties. Considering that the Complainant did not start selling products in Türkiye and assures the Panel that they do not have an official distributor in this regard, the Panel is convinced that the Respondent gives a false impression supported by the associated website to the Internet users (see *Philip Morris Products S.A. v. Mahir Sultanov*, WIPO Case No. [D2019-1533](#)). The Panel underlines that such mentioned actions within the associated website result in failure of *Oki Data* safe harbour consideration for the purposes of second element.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Panel accepts that the Complainant has rights to several international IQOS trademark registrations and is well-known in its respective sector.

Registration of the disputed domain name by the Respondent was on November 17, 2021, which is years after the first IQOS trademark registration in 2014. A domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of the Respondent’s bad faith (see *PJ Hungary Szolgáltató Korlátolt Felelősségű Társaság v. Web Commerce Communications Limited, Client Care*, WIPO Case No. [D2022-1345](#)).

It also appears to the Panel that the Respondent has registered the disputed domain name solely for the purpose of creating a confusion with the Complainant and its products. After the examination of the associated website presented by the Complainant in, the Panel finds that the Respondent has registered the disputed domain name in order to gain profit from the Complainant’s sectoral recognition. The Respondent even used the Complainant’s official product images and the IQOS trademark within the associated website explicitly in order to create a likelihood of confusion in the eyes of Internet users.

In regards to prior complaint made by the Complainant concerning the Respondent’s nearly identical domain name <aykosturkiye.com>, the Panel accepts that the Respondent was aware of the Complainant’s IQOS trademark when registering the disputed domain name and has engaged in a pattern of abuse.

In addition, the Panel is of the opinion that the Respondent’s lack of response to the complaint also further strengthens outcome that it has registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, 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, <aykosturkiye.net> be transferred to the Complainant.

/Ahmet Akgüloglu/

Ahmet Akgüloglu

Sole Panelist

Date: October 25, 2023