

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. deniz altunoglu, Rakip Marketing Case No. D2023-4717

1. The Parties

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

The Respondent is deniz altunoglu, Rakip Marketing, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <ilumatereasiparis.com> is registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 14, 2023. On November 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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 (Rakip marketing) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 November 16, 2023.

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 November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 14, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on January 3, 2024. 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 group of companies. The Complainant's group is engaged in the production of tobacco products as well as smoke free products, and has developed a tobacco heating system under the brand name IQOS.

IQOS is a heating device into which a specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavorful nicotine-contained aerosol (hereinafter collectively referred to as the "IQOS Systems"). The IQOS heating device is available in 5 versions, including the IQOS ILUMA version.

The IQOS system was first launched in Japan in 2014 and is currently distributed through the Complainant's official stores and websites and selected authorized distributors and retailers, in around 71 markets across the world.

The Complainant owns multiple trademark registrations in connection with its smoke free products in various jurisdictions including Turkey where the Respondent is purportedly based. Notably, the Complainant's portfolio of trademark registrations includes the following:

- Turkish Registration **ILUMA** (word) No. 2019 128833 registered on September 22, 2020 (with priority of September 16, 2019);
- Turkish Registration **TEREA** (word) No. 2019 128867 registered on September 17, 2020;
- Turkish Registration **IQOS ILUMA** (word) No. 2019 128850 registered on November 6, 2020 (with priority of September 16, 2019);
- International Registration HEETS (word) No. 1326410 registered on July 19, 2016 designating Australia, Bahrain, Botswana, Colombia, Curaçao, European Union, Georgia, Israel, Iceland, Japan, Korea (Republic of), Mexico, Norway, New Zealand, African Intellectual Property Organization, Oman, Philippines, Singapore, Turkmenistan, Türkiye, the United States of America ("USA"), Uzbekistan, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belarus, China, Algeria, Egypt, Kenya, Kyrgyzstan, Liechtenstein, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Mozambique, Serbia, Russian Federation, San Marino, Ukraine, Viet Nam;
- International Registration IQOS (word) No. 1218246 registered on July 10, 2014 designating Antigua and Barbuda, Bahrain, Bonaire, Sint Eustatius and Saba, Colombia, Curaçao, European Union, Georgia, Gambia (the), Israel, India, Iceland, Madagascar, Malawi, New Zealand, Oman, Philippines, Sao Tome and Principe, Sint Maarten (Dutch part), Tunisia, Türkiye, Zambia, Zimbabwe, Albania, Armenia, Bosnia and Herzegovina, Belarus, Cuba, Algeria, Egypt, Kyrgyzstan, Korea (Democratic People's Republic of), Kazakhstan, Liberia, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Mongolia, Serbia, Sudan, Tajikistan, Ukraine, Viet Nam;
- Turkish Registration  (device) No. 2020/144615 registered on July 1, 2021 (with priority of June 16, 2020);
- International Registration 
(word/device) No. 1328679 registered on July 20, 2016 designating Australia, Bahrain, Botswana, Colombia, Curaçao, European Union, Georgia, Israel, Iceland, Japan, Korea (Republic of), Mexico, Norway, New Zealand, African Intellectual Property Organization, Oman, Philippines, Singapore, Turkmenistan, Türkiye, USA, Uzbekistan, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belarus, China, Algeria, Egypt, Kenya, Kyrgyzstan, Liechtenstein, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Mozambique, Serbia, Russian Federation, Ukraine, Viet Nam;

- International Registration **IQOS** ;

(device) No. 1338099 registered on November 22, 2016 designating Australia, Bahrain, Colombia, European Union, Georgia, Israel, India, Iceland, Japan, Korea (Republic of), Mexico, Norway, New Zealand, Oman, Philippines, Singapore, Türkiye, USA, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belarus, Algeria, Egypt, Kazakhstan, Morocco, Monaco, Montenegro, Serbia, Russian Federation, Ukraine;

- International Registration **IQOS** ;

(device) No. 1461017 registered on January 18, 2019 designating Afghanistan, Antigua and Barbuda, Australia, Bahrain, Brunei Darussalam, Bonaire, Sint Eustatius and Saba, Colombia, Curaçao, Georgia, Indonesia, Israel, India, Iceland, Cambodia, Lao People's Democratic Republic, Mexico, Norway, New Zealand, African Intellectual Property Organization, Oman, Philippines, Singapore, Syrian Arab Republic, Thailand, Turkmenistan, Tunisia, Türkiye, Uzbekistan, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belarus, Cuba, Algeria, Egypt, Kyrgyzstan, Kazakhstan, Liechtenstein, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Mongolia, Mozambique, Serbia, Russian Federation, San Marino, Ukraine, Viet Nam;

- International Registration **IQOS** ;

(device) No. 1557546 registered on August 27, 2020 designating Australia, Bahrain, Brunei Darussalam, Brazil, Canada, Colombia, Curaçao, Estonia, the United Kingdom ("UK"), Georgia, Indonesia, Israel, India, Iceland, Cambodia, Korea (Republic of), Malawi, Mexico, Malaysia, Norway, New Zealand, African Intellectual Property Organization, Oman, Philippines, Singapore, Thailand, Türkiye, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belarus, Algeria, Egypt, Kyrgyzstan, Kazakhstan, Liechtenstein, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Serbia, San Marino, Ukraine, Viet Nam;

- International Registration



(word/device) No. 1629687 registered on August 26, 2021 designating Australia, Bahrain, Brazil, Canada, Colombia, Curaçao, UK, Georgia, Indonesia, Israel, Iceland, Mexico, Malaysia, Norway, New Zealand, Philippines, Trinidad and Tobago, Uzbekistan, Albania, Armenia, Bosnia and Herzegovina, Belarus, Egypt, Kyrgyzstan, Kazakhstan, Morocco, Monaco, Moldova (Republic of), Montenegro, Republic of North Macedonia, Serbia, Ukraine, Viet Nam.

The disputed domain name was registered on August 12, 2023, and resolves to a website allegedly selling the Complainant's IQOS system products (including the IQOS ILUMA heating device and the TEREA tobacco sticks), as well as competing third parties' products and accessories which are not endorsed or otherwise approved by the Complainant. The Complainant's IQOS trademark and logo appears within the Respondent's website banner.

The Respondent's website is provided in Turkish language and all prices are in Turkish lira. It is therefore mainly directed to Turkey where the Complainant's IQOS system products are not currently sold.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- The disputed domain name is confusingly similar with the Complainant's trademarks ILUMA and TEREА, that are entirely incorporated in the disputed domain name. The addition of the term "siparis" (meaning "order" in Turkish) does not prevent a finding of confusing similarity;
- The Respondent has no rights or legitimate interests in the disputed domain name. In this connection the Complainant contends that the Respondent (i) has not been authorized, licensed or otherwise permitted to use the Complainant's ILUMA and TEREА trademarks, (ii) is not an authorized distributor of the Complainant's products, and (iii) is selling competing tobacco products and/or accessories of other commercial origin. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and does not meet the requirement set out by numerous panel decisions for a *bona fide* offering of goods. In particular, the Respondent would be unable to avail itself of the safe harbor to be found in the case of *Oki Data Americas Inc. v. ASD Inc.*, WIPO Case No. [D2001-0903](#). With regard to the requirements put forward in that case, the Complainant submits that the Respondent is offering the Complainant's products alongside competing tobacco products and accessories of other commercial origin and this in itself is sufficient to exclude a legitimate interest on the basis of a bona fide offering of goods; and
- The disputed domain name was registered and is being used in bad faith. In this connection the Complainant submits that its trademarks ILUMA and TEREА are purely imaginative terms and unique to the Complainant. The Respondent's use of the disputed domain name in connection with the Complainant's branded products clearly indicates that the Respondent knew of the Complainant's trademarks when registering the disputed domain name. The Respondent shows a clear intent to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's registered trademarks ILUMA and TEREА. The Complainant submits that the disputed domain name clearly suggests to Internet users that the Complainant is the source of the Respondent's website. This suggestion is further supported by the Respondent's use of the Complainant's official product images and of the Complainant's registered IQOS logo within the banner of the Respondent's website.

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.

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and 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 must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's registered trademarks ILUMA and TEREJA are reproduced and recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The addition of the generic Top-Level Domain such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Although the addition of other terms (here, "siparis" meaning "order" in Turkish) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds 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 rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, given the composition of the disputed domain name, wholly incorporating the Complainant's trademark with the addition of the term "siparis", meaning "order" in Turkish, and the absence of any relationship between the Respondent and the Complainant, the Respondent's use of the disputed domain name carries a risk of implied affiliation with the Complainant, and can constitute neither a bona fide use nor a legitimate noncommercial or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5.1.

On the other hand, the Respondent is not an authorized distributor or reseller of the Complainant's products. Based on the evidence submitted by the Complainant, the Respondent is selling online the Complainant's IQOS System products alongside competing tobacco products and/or accessories of other commercial origin. The Panel agrees with the Complainant that this would exclude a legitimate interest in the form of *bona fide* offering of goods under the case of *Ok! Data Americas, Inc. v. ASD, Inc.*, [WIPO Case No. D2001-0903](#). Moreover, the website to which the disputed domain name resolves fails to accurately and prominently disclose the relationship, or lack thereof, to the Complainant and noting the risk of implied affiliation caused by the identical reproduction of the Complainant's marks in the construction of the disputed domain name, this as a whole cannot constitute fair use.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name fully incorporates the Complainant's ILUMAS and TEREAS registered trademarks and is being used by the Respondent to purportedly sell third party products along with official products of the Complainant or at least products which evidently feature its registered trademarks.

All the above indicates that the Respondent had the Complainant or its trademarks in mind when selecting the disputed domain name and suggests that the disputed domain name was registered and is being used in bad faith with a deliberate intent to create an impression of an association with the Complainant and attract, for commercial gain, Internet users.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <ilumatereasisparis.com> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: January 16, 2024