

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Baran Bolukbasi  
Case No. D2023-5131

### **1. The Parties**

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

The Respondent is Baran Bolukbasi, Türkiye.

### **2. The Domain Name and Registrar**

The Domain Name <iqosstoreturkiye.com> is registered with Wix.com Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2023. On December 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 December 14, 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 amendment to the Complaint on December 20, 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 December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

The Center appointed Enrique Bardales Mendoza as the sole panelist in this matter on January 16, 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 a company which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI"). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. Also, PMI is known for innovating across its brand portfolio. In the course of transforming its business from combustible to Reduced Risk Products or "RRPs", PMI has developed and sold a tobacco heating system called IQOS.

Today the IQOS System is available in key cities in around 71 markets across the world. As a result of an investment of over USD 9 billion into the science and research of developing smoke-free products and extensive international sales (in accordance with local laws), the IQOS System has achieved considerable international success and reputation, and approximately 19.1 million relevant consumers using the IQOS System worldwide. To date, the IQOS System has been almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant is the owner of numerous trademarks, including:

- International trademark IQOS registered under registration no. 1218246 on July 10, 2014, for goods in international classes 9, 11, and 34.
- International trademark IQOS registered under registration no. 1338099 on November 22, 2016, for services in international class 35.
- International trademark IQOS registered under registration no. 1461017 on January 18, 2019, for goods in international classes 9 and 34.
- International trademark IQOS registered under registration no. 1557546 on August 27, 2020, for goods and services in international classes 9, 18, 34, 35, 37, and 41.
- International trademark IQOS registered under registration no. 1329691 on August 10, 2016, for goods in international classes 9, 11, and 34.

The Domain Name was registered on August 24, 2023. The Domain Name resolves to an online shop allegedly selling and offering the Complainant's IQOS System.

#### **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 Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

In an UDRP procedure, according to paragraph 4(a) of the Policy, the Complainant must establish the following elements:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) the Respondent has no right or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

#### **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 mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the terms "store" and "turkiye" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the 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 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 Domain Name such as those enumerated in the Policy or otherwise.

- (i) First of all, the Respondent has not submitted any response and has not claimed any rights or legitimate interests with respect to the Domain Name. As per the Complaint, the Respondent was not authorized to register the Domain Name.
- (ii) Secondly, the Respondent did not demonstrate, prior to the notice of the dispute, any use of the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.
- (iii) Thirdly, the Domain Name constitutes a total transcription of the Complainant's trademark.

(iv) Moreover, the Complainant has provided evidence showing that the disputed domain name resolves to a website displaying the Complainant's trademark and allegedly offering for sale the Complainant's products. Further, the website does not appear to have accurately and prominently disclose the lack of relationship between the Respondent and the Complainant, in particular the Respondent is not an authorized dealer of the Complainant. A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and [WIPO Overview 3.0](#), section 2.8.1. The requirements of Oki data are not fulfilled in the present case.

(v) There is no evidence on record giving rise to any rights or legitimate interests in the Domain Name on the part of the Respondent within the meaning of paragraph 4(c) of the Policy.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel concludes that the Respondent has registered and used the Domain Name in bad faith for the following reasons:

(i) IQOS trademark had been widely used and registered by the Complainant before the Domain Name's registration.

(ii) The Respondent had sufficient tools to verify that the Complainant is the owner of the IQOS trademarks. For instance, the Respondent could have used a search engine for this purpose before registering the Domain Name.

(iii) The Complainant and its trademarks are widely known and may suffer bad reputation because the Domain Name incorporates the IQOS trademark in its entirety.

(iv) The Domain Name is currently active and functional. After having reviewed the Complainant's evidence of the website linked to the Domain Name, the Panel is of the opinion that the Respondent has intentionally registered the Domain Name in order to generate traffic to its own website. The Panel notes that the Respondent has not published an accurate and prominent disclaimer on its website to explain that there is no existing relationship between the Respondent and the Complainant. On the contrary, the prominent use of official product images of the Complainant and of its registered trademarks on the associated website as well as the inherently misleading nature of the 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. [WIPO Overview 3.0](#), section 3.1.4.

Further, the Panel finds that the lack of Response supports Panel's finding of bad faith.

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 Domain Name <iqosstoreturkiye.com> be transferred to the Complainant.

*/Enrique Bardales Mendoza/*

**Enrique Bardales Mendoza**

Sole Panelist

Date: January 30, 2024