

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Turgay Sevimli  
Case No. D2024-0007

### 1. The Parties

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

The Respondent is Turgay Sevimli, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <iqmagazasi2.com> is registered with Isimtescil Bilişim A.Ş. (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 3, 2024. On January 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2024, 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 January 4, 2024, 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 8, 2024.

On January 4, 2024, the Center informed the Parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On January 8, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.


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 in both English and Turkish of the Complaint, and the proceedings commenced on January 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 1, 2024.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on February 6, 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 an international tobacco and smoke-free products company. The Complainant's products are sold in approximately 180 countries. Since 2014, the Complainant has sold a smoke-free, controlled heating device system called "Iqos", into which specifically designed tobacco sticks are inserted and heated to generate a nicotine-containing aerosol. The IQOS system is available in approximately 71 markets across the world with approximately 19.1 million consumers. It is almost exclusively distributed through the Complainant's official IQOS stores and websites as well as selected authorized distributors and retailers. The Complainant owns trademark registrations for IQOS (the "Mark") around the world, including:

- International Registration IQOS (word) No. 1218246, registered on July 10, 2014, designating several jurisdictions including Türkiye,
- International Registration IQOS (device) No. 1338099, registered on November 22, 2016, designating several jurisdictions including Türkiye,
- International Registration  (device) No. 1214415, registered on June 11, 2014, designating several jurisdictions including Türkiye,
- United Arab Emirates trademark IQ (word) No. 322648, registered on April 27, 2020.

The disputed domain name was registered by the Respondent on October 25, 2023, and has been used to direct Internet users to a website featuring an online shop which purports to offer for sale the Complainant's IQOS products (the "Website") and competing products. Those offers are made under the Mark and alongside the unauthorized use of some of the Complainant's official product images. The Website is provided in Turkish and lists prices in Turkish Lira, the currency of Türkiye, notwithstanding that the Complainant does not officially sell its IQOS system in Türkiye.

At the time of the decision, the disputed domain name redirects users to another domain name, namely, <iqmagazasi3.com>, which has the same content explained above.

#### **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.

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

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

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

##### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Turkish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Respondent appears to be capable of reading and understanding the English language while the Complainant as a Swiss entity has no knowledge of Turkish.

The Respondent did not make any submissions with respect to the language of the proceeding, even though communicated in Turkish and in English. In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above and the language of the proceedings as English in the previous *Philip Morris Products S.A. v. Turgay Sevimli*, WIPO Case No. [D2023-3945](#), involving the same Respondent as here, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## 6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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 a trademark 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(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

### 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 3.0](#), section 1.7.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the IQ trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Moreover, the Panel notes that “IQ” could be perceived as an abbreviated version of IQOS, and that the website at the disputed domain name includes the titles “IQOS Elektronik Sigara” and “IQOS Heets” with “IQOS”. The Panel finds that the disputed domain name is confusingly similar to the Complainant’s IQOS trademarks as well, with the content of the website at the disputed domain name affirming the Panel’s finding of confusing similarity.

It is also well accepted that a generic Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.

Although the addition of other term here, “magazasi2” (which is Turkish and means “store2” in the English language) 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.

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.

In this regard, the Panel particularly believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant’s products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in Oki Data are apparently not fulfilled in the present case. The Panel notes that the Respondent offers not only products of the Complainant but also competing third party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and/or authorized reseller/distributor for the Complainant’s products in Türkiye. In view of the Panel, all this takes the Respondent out of the Oki Data safe harbor for purposes of the second element.

Moreover, given the composition of the disputed domain name, wholly incorporating the Complainant’s trademark with the addition of the term “magazasi2”, meaning “store2” in English, 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.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its IQ and IQOS trademarks in mind when registering the disputed domain name. It is obvious to the Panel that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users searching for the Complainant and its products. Furthermore, the Complainant's IQOS trademark is distinctive and unique to the Complainant. It is therefore beyond the realm of coincidence that the Respondent chose the disputed domain name without the intention of creating a false association with the Complainant.

Moreover, the Respondent has registered at least one other domain name incorporating the Complainant's same IQ and IQOS trademarks. (see *Philip Morris Products S.A. v. Turgay Sevimli, supra.*) For the purposes of the third element of the Policy, such pattern of abusive conduct shall be further evidence of bad faith registration.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent used the disputed domain name in order to generate traffic to its own website by deliberately misleading third parties in a false belief that the associated website is either operated or at least authorized by the Complainant.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

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, <iqmagazasi2.com>, be transferred to the Complainant.

*/Gökhan Gökçe/*

**Gökhan Gökçe**

Sole Panelist

Date: February 20, 2024