

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. alireza Soraya, iqospersian
Case No. D2024-0277

1. The Parties

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

The Respondent is alireza Soraya, iqospersian, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain name <iqos-persian.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2024. On January 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 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 February 14, 2024.

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 February 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 12, 2024.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on March 15, 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 Philip Morris International group, an international tobacco company, with products sold in approximately 180 countries. The Complainant is active in the field of tobacco and smoke-free products. One of these smoke-free products is called IQOS, a controlled heating device into which specially designed tobacco products are inserted and heated to generate a flavorful nicotine-containing aerosol.

The Complainant owns a large portfolio of IQOS trademarks, including the International Trademark Registration number 1218246, registered on July 10, 2014.

The disputed domain name was registered on August 28, 2022.

The Panel accessed the disputed domain name on March 22, 2024, which resolved to a webstore named "Iqos Persian", containing reproductions of the IQOS trademark and where nicotine heating devices ("vapes") were offered for sale, including IQOS devices and where third party competing products/accessories were also offered for sale. The "Contact us" section of the webstore states - in Persian - that it is being offered by "the largest supplier of IQOS products in Iran [Islamic Republic of]." The evidence provided by the Complainant shows that the disputed domain name resolved to the same website at the time of filing of the Complaint.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name reproduces the IQOS trademark in its entirety, in addition to the non-distinctive and descriptive word "persian" and the Top-Level Domain ("TLD") ".com". The Complainant is the registered owner of the IQOS trademark in numerous jurisdictions, including, but not limited to Iran (Islamic Republic of). It is well accepted that the test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name to assess whether the mark is recognizable within the disputed domain name. A domain name is confusingly similar to a trademark, when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. It is also well established that the applicable TLD in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, it cannot be questioned that the disputed domain name is confusingly similar to the IQOS trademark registrations of the Complainant. Any Internet user when visiting a website provided under the disputed domain name will reasonably expect to find a website commercially linked to the owner of the IQOS trademarks. This unlawful association is exacerbated by the use of the Complainant's official product images and marketing materials without the Complainant's authorization.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has made a prima facie case that the Respondent lacks any rights or legitimate interests in the disputed domain name. Firstly, the Respondent is not an authorized distributor or reseller of the IQOS System. Secondly, the website at the disputed domain name is selling competing tobacco products and/or accessories of other commercial origin, as well as infringing products bearing the Complainant's IQOS trademark. Thirdly, the website provided under the disputed domain name does not meet the requirements set out by numerous panel decisions for a bona fide offering of goods. In the present case, the disputed domain name in itself suggests at least an affiliation with the Complainant and its IQOS trademark, as the disputed domain name wholly reproduces the Complainant's registered IQOS trademark together with the non-distinctive and descriptive word "persian". In addition, the owner/administrator of the website prominently and without authorization presents the Complainant's registered IQOS trademark and registered

logo, as well as reproduces the Complainant's official product images and marketing materials, without authorization. There is no information regarding the identity of the provider of the website, which is only identified as "IQOS Persian" (a name that includes the Complainant's registered IQOS trademark - without authorization). Moreover, the fact that the Respondent is not only offering the Complainant's products but also competing heated tobacco products and/or accessories and an infringing cleaning product for use with the Complainant's IQOS System, of other known and unknown commercial origin is in itself sufficient to exclude a legitimate interest in the form of a bona fide offering of goods. As the Complainant's IQOS System is primarily distributed through official/endorsed stores, in this case Internet users/relevant consumers are clearly misled regarding the relationship between the website at the disputed domain name and the Complainant, and will falsely believe the website to be an official/endorsed distributor. The website at the disputed domain name suggests a false impression that the Complainant has officially introduced the IQOS System into the Iranian market.

- The disputed domain name was registered and is being used in bad faith. It is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's IQOS trademark when registering the disputed domain name. The mark IQOS is purely an imaginative term and unique to the Complainant. It is also evident from the Respondent's use of the disputed domain name that the Respondent has registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. By reproducing the Complainant's registered trademark in the disputed domain name and the title of the website, as well as by using the Complainant's official product images and marketing materials, the Respondent is clearly suggesting to any Internet user that the Complainant is the source of such website, which it is not. Additionally, the Respondent is also offering for sale third party products of other commercial origin, including an infringing cleaning product for use with the Complainant's IQOS System. Such abusive use of the Complainant's IQOS trademark for purposes of promoting competing products is a clear-cut trademark infringement and constitutes clear evidence of the Respondent's bad faith. Finally, the fact that Respondent is using a privacy protection service to hide its true identity may in itself constitute a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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.

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.

Annexes 6 and 7 to the Complaint show registrations of IQOS trademarks obtained by the Complainant, since at least 2014. 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 trademark IQOS is wholly encompassed within the disputed domain name, together with the term “-persian”, as well as with the TLD extension “.com”.

Although the addition of other terms (here, “-persian”) 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.

It is also well established that the addition of a TLD, such as “.com”, is typically disregarded when determining whether a domain name is confusingly similar to a complainant’s trademark as such is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Complainant has not licensed nor authorized the use of its well-known trademark to the Respondent, and the Panel finds no indication that the Respondent is commonly known by the disputed domain name.

Furthermore, the Complainant has shown that the disputed domain name is linked to a website offering the Complainant’s IQOS devices for sale, reproducing the Complainant’s trademark and logo, as well as a number of the Complainant’s official product images and marketing materials. However, according to the Complainant, the Respondent is not an authorized reseller, nor has the Respondent obtained any permission for such reproductions of trademarks, logos and copyrighted materials.

Additionally, although encompassing the Complainant’s trademark IQOS on the website at the disputed domain name and entitling the respective website “Iqos Persian”, such website also offers for sale competing products and does not accurately and prominently disclose the Respondent’s relationship with the Complainant. Therefore, the Respondent does not pass the “Oki Data test” to characterize a bona fide offering of goods and services on the website at the disputed domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

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 it is not feasible that the Respondent was not aware of the Complainant's trademark and that the registration of the disputed domain name was a mere coincidence.

When the disputed domain name was registered (in 2022), the IQOS trademark was already connected with the Complainant's smoking devices.

The disputed domain name includes the distinctive trademark IQOS in its entirety, which has no dictionary meaning in English. According to the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Also, the Panel considers that the addition of the term "-persian" even enhances the perception that the disputed domain name is sponsored or endorsed by the Complainant, in the present case, as it may suggest that it is the official Persian IQOS webstore. In this regard, the Complainant has made it clear that the Respondent is not an authorized supplier of IQOS products.

Actually, the content at the website linked to the disputed domain name - including reproductions of the Complainant's trademark and the description of the respective products offered for sale - makes clear that the Respondent has intentionally attempted to attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website. The situation is aggravated by the offer of competing products through a domain name that reproduces the Complainant's trademark.

Finally, the absence of a formal reply from the Respondent to the Complainant's contentions and of any justification for the use of such well-known trademark are further evidence of bad faith in the present case.

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

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 <iqos-persian.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: March 29, 2024