

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Gökhan Baydemir
Case No. D2024-3213

1. The Parties

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

The Respondent is Gökhan Baydemir, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <tereaantalya.com> is registered with IHS Telekom, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 6, 2024. On August 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 7, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 August 12, 2024.

On August 9, 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 August 12, 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 of the Complaint both in English and Turkish, and the proceedings commenced on August 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2024. The

Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 16, 2024.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on September 19, 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 Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS, TEREА and HEETS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located. According to the Complaint, the Complainant is, among others, the registered owner of the following trademark registrations:

- Turkish Registration TEREА (word) No. 2019 128867, registered on September 17, 2020;
- International Registration IQOS (word) No. 1218246, registered on July 10, 2014, designating several jurisdictions including Türkiye;
- International Registration HEETS (word) No. 1326410, registered on July 19, 2016, designating several jurisdictions including Türkiye covering trademark protection, inter alia, for electronic cigarettes as covered in classes 9 and 11 pursuant to Annex 6 to the Complaint.

The disputed domain name was registered on March 15, 2024.

The screenshots, as provided by the Complainant, show that the disputed domain name resolved to a website in the Turkish language, which was used for allegedly offering IQOS, TEREА and HEETS smoke free products. Those offers are made under the Complainant's trademarks and alongside the unauthorized use of some of the Complainant's official product images without a visible disclaimer describing the (lack of) relationship between the Parties. The website is provided in Turkish notwithstanding that the Complainant does not officially sell its IQOS system in Türkiye. Moreover, the website is using a highly similar footer as that found on the Complainant's official IQOS website for the United Kingdom without the Complainant's authorization.

The Respondent is an individual from Türkiye. The Panel visited the disputed domain name on September 30, 2024, and determined that the disputed domain name is still active, and the disputed domain name resolves to a website in Turkish which allegedly offers IQOS, TEREА and HEETS smoke-free products.

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. Gokhan Baydemir*, WIPO Case No. [D2024-0276](#), 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 on the basis of the statements and documents submitted and 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 TERE A trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the TERE A 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.

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 terms, here “Antalya”, 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 *Okı Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Okı Data”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in Okı Data are apparently not fulfilled in the present case. 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 Okı Data safe harbor for purposes of the second element.

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 Respondent must have had the Complainant and its TEREА, HEETS 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 the Complainant's trademarks, and mislead Internet users searching for the Complainant and its products. Furthermore, the Complainant's TEREА 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 HEETS trademark. (See *Philip Morris Products S.A. v. Gokhan Baydemir*, 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.

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 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 <tereаantalyа.com> be transferred to the Complainant.

/Gökhan Gökçe/

Gökhan Gökçe

Sole Panelist

Date: October 3, 2024