

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Host Master, Njalla Okta LLC  
Case No. D2024-3452

### **1. The Parties**

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

The Respondent is Host Master, Njalla Okta LLC, Saint Kitts and Nevis.

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

The disputed domain name <buhariluma.com> is registered with Tucows Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 23, 2024. On August 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 August 23, 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 26, 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 August 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 18, 2024.

The Center appointed Andrea Cappai as the sole panelist in this matter on September 23, 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 a group of companies that form a leading international tobacco and smoke-free products enterprise, with a presence in approximately 180 countries worldwide. It has developed and currently markets a tobacco heating system known as IQOS. There are six versions of the IQOS device, including the IQOS ILUMA and IQOS ILUMA i models.

The Complainant holds several trademark registrations globally, including the following:

- ILUMA (word mark) International Registration No. 1764390, registered on October 12, 2023.
- ILUMA ONE (word mark) International Registration No. 1544146, registered on June 8, 2020, designating various jurisdictions including Türkiye.
- ILUMA (word mark) Turkish Registration No. 2019 128833, registered on September 22, 2020, with a priority date of 16 September 2019.

The disputed domain name was registered by the Respondent on July 5, 2024, and is associated with an online store allegedly selling the Complainant's IQOS System, as well as competing products from other commercial sources, without any disclaimer as to the lack of association with the Complainant. The website is in Turkish, with all prices listed in Turkish Lira. It also features several of the Complainant's official product images and marketing materials. The Complainant does not currently offer for sale its IQOS System in Türkiye.

#### **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 reproduces its registered ILUMA trademark along with the descriptive term "buhar," meaning "steam" in Turkish. The Complainant has not authorised the Respondent to use any of its trademarks or register a domain name incorporating the ILUMA mark. The Complainant maintains that the Respondent lacks any rights or legitimate interests in the disputed domain name and is commercially benefiting by misleading consumers.

The choice of the disputed domain name, the characteristics of the associated website, and the manner of its use indicate that the Respondent registered and used the disputed domain name with the intention to attract Internet users for commercial gain, creating confusion with the Complainant's ILUMA trademark regarding the source, sponsorship, affiliation, or endorsement of the website or its products.

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

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

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

##### **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.

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 mark is recognisable 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.

Although the addition of other terms – such as “buhar”, which in Turkish means “vapour” or “steam” – 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.

## **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 recognised 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 affirms that there is no affiliation or authorisation with the Respondent, who has no rights to use or register the Complainant’s trademark in connection with the disputed domain name. The disputed domain name incorporates the Complainant’s trademark along with the descriptive term “buhar,” which means “vapour.” This is significant, as the Complainant’s product – apparently available on the Respondent’s website – generates vapour, further linking the disputed domain name to the Complainant’s trademark.

The use of the Complainant’s trademark in conjunction with a descriptive term related to the Complainant’s products creates a misleading association, demonstrating the Respondent’s intent to unfairly exploit the trademark’s reputation. This precludes any claim to rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent is offering not only the Complainant’s products but also competing tobacco products and accessories from various sources. This undermines any claim of a bona fide offering of goods. Under the “Oki Data test,” a distributor or reseller can only claim legitimate use of a domain name if all specified conditions are cumulatively met. The failure to meet even one condition – such as exclusively selling the trademarked goods – eliminates this safe harbour. [WIPO Overview 3.0](#), section 2.8.1.

The website’s prominent and unauthorised use of the Complainant’s registered trademarks and official product images further reinforces the false impression of affiliation.

The combination of using the Complainant's trademarks and images, alongside offering competing products, indicates a deliberate attempt by the Respondent to exploit the reputation and goodwill of the Complainant's brand to attract Internet users. This clearly demonstrates the absence of any rights or legitimate interests in the disputed domain name.

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 observes that the inclusion of the Complainant's mark in the disputed domain name, alongside a descriptive term related to the Complainant's products, suggests that the Respondent was aware of the Complainant and its trademark rights when registering the disputed domain name.

The Respondent has failed to provide any evidence of good faith use of the disputed domain name. Instead, the available records, including the disputed domain name's structure, the characteristics of the associated website, and the unauthorised use of the Complainant's images and trademarks – which falsely imply a connection to the Complainant and lend an appearance of legitimacy to the Respondent's business – indicate that the Respondent, acting in bad faith, has deliberately sought to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark.

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 <buhariluma.com> be transferred to the Complainant.

*/Andrea Cappai/*

**Andrea Cappai**

Sole Panelist

Date: October 9, 2024