

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Apaydin Mehpare
Case No. D2024-3595

1. The Parties

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

The Respondent is Apaydin Mehpare, France.

2. The Domain Name and Registrar

The disputed domain name <vapeluma.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2024. On September 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 9, 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 (Domain Admin / Vapeluma) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 10, 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 September 11, 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 September 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 8, 2024.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on October 14, 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 tobacco and smoke-free products company. The Complainant's parent company, Phillip Morris International Inc., in the course of transforming its business from combustible cigarettes to Reduced Risk Products (RRPs) has developed a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks are inserted and heated to generate a flavourful nicotine-containing aerosol. The Complainant holds various registrations for the mark, ILUMA, ILUMA ONE, IQOS ILUMA PRIME. The details of which are mentioned below:

- ILUMA – International Registration No. 1764390 registered on October 12, 2023
- ILUMA ONE – International Registration No. 1544146 registered on January 10, 2021
- IQOS ILUMA PRIME – International registration No. 1544199 registered on June 8, 2020

The disputed domain name <vapeluma.com> resolves to a website which purportedly offers the Complainant's IQOS system products and displays inter alia the Complainant's IQOS and ILUMA ONE trademarks. The disputed domain name was registered on June 8, 2024. The Respondent has also used the logo  on its website.

5. Parties' Contentions

A. Complainant

The Complainant claims it is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. The Complainant introduced its RRPs and developed a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks are inserted and heated to generate a flavourful nicotine-containing aerosol. The Complainant sold its RRPs under the mark ILUMA, which is registered in Türkiye as well as in other jurisdictions. The Complainant has submitted a list of such trademarks as Annex 6 with the Complaint.

The disputed domain name <vapeluma.com> is linked to an online shop selling and offering the Complainant's IQOS system. The website is provided in Turkish. The fact that the website is indicating all prices in Turkish lira (TL) currency, clearly indicates that the website is directed to Turkey.

The Complainant argues that the disputed domain name attempts to employ an obvious or intentional "misspelling" of the ILUMA trademark by omitting the letter "i" at the beginning of the word "iluma", which is not sufficient to avoid a finding of confusing similarity. The disputed domain name reproduces a mark highly similar / phonetically almost identical to the ILUMA trademark, in addition to the non-distinctive and descriptive word "vape". To this end, the Complainant has cited the decision in *Philip Morris USA Inc. v. Steven Scully, J&S Auto Repair*, WIPO Case No. [D2015-1001](#); *Hertz System, Inc. v. Kwan-ming Lee*, WIPO Case No. [D2009-1165](#).

The Complainant argues that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its ILUMA trademark (or a domain name which will be associated with this trademark). The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent's behaviour shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly divert consumers or to tarnish the trademarks owned by the Complainant. Firstly, the Respondent is not an authorized distributor or reseller of the IQOS system.

Secondly, the website does not meet the Oki Data Test. The Complainant does not currently offer for sale its IQOS system products in Türkiye. The Complainant argues that the Respondent's website creates the false impression that the Complainant has officially introduced the IQOS system into the Turkish market.

The Complainant alleges that the disputed domain name was registered and is being used in bad faith. The Complainant submits that the Respondent knew of the Complainant's ILUMA trademark when registering the disputed domain name. The Respondent started offering the Complainant's IQOS system immediately after registering the disputed domain name. The Complainant also submits that the term "iluma" is a unique and purely imaginative term and is not commonly used to refer to tobacco products or electronic cigarette devices. The Complainant further alleges that it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name, without the intention of invoking a misleading association with the Complainant. It is also evident that the Respondent 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 ILUMA 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.

B. Respondent

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

6. Discussion and Findings

As per paragraph 5(f) of the Rules where a Respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel may draw such inferences as it considers appropriate. It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required by a preponderance of evidence:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 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.

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 agrees with the Complainant that the Respondent registered the disputed domain name attempting to employ an obvious or intentional 'misspelling' of the ILUMA trademark by omitting the letter 'i' at the beginning of the trademark. The Panel finds the mark ILUMA remains 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 and section 1.9.

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 website under the disputed domain name offers for sale products bearing the Complainant’s trademarks, uses the Complainant’s official product images and marketing materials without authorization and displays the Complainant’s IQOS and ILUMA ONE trademarks. In this case Internet users/relevant consumers are clearly misled regarding the relationship between the website and the Complainant and will falsely believe the website under the disputed domain name to be an official/endorsed distributor.

Panels have held that the use of a domain name for illegitimate activity of impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In the absence of a response from the Respondent and its failure to counter the allegations of the Complainant, and noting the use to which the disputed domain name was put, the Panel cannot see how the Respondent could have 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 notes that the Respondent was well aware of the Complainant’s well-known trademark at the time of registration and clearly acted in opportunistic bad faith, by registering the disputed domain name for the purpose of taking commercial advantage of the Complainant’s trademark by intentionally creating a likelihood of confusion with the Complainant’s trademark.

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.

Panels have held that the use of a domain name for illegitimate activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <vapeluma.com> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: October 28, 2024