

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. sercan mumcu, selami seyhanli
Case No. D2024-4103

1. The Parties

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

The Respondent is sercan mumcu, selami seyhanli, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <ilumaanakara.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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 October 11, 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 October 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 October 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 5, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on November 11, 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 affiliated to Philip Morris International Inc. (jointly referred to as “PMI”). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

While transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”, which the Complainant defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), PMI has developed a number of RRP products, one of which is a tobacco heating system called IQOS.

IQOS is a precisely controlled heating device into which specially designed tobacco sticks identified with the brand names HEETS, HEATSTICKS, TEREA and ILUMA are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the “IQOS System”). There are six versions of the IQOS heating devices currently available: the IQOS 2.4/IQOS 2.4+ pocket charger and holder, IQOS 3 pocket charger and holder, IQOS 3 Multi device, IQOS 3 DUO/DUOS, IQOS ILUMA and IQOS ILUMA i.

The IQOS System was first launched by PMI in Nagoya, Japan, in 2014 and has obtained a 20 percent share of the market in such country. Today, the IQOS System is available in key cities in around 84 markets across the world and is almost exclusively distributed through PMI’s official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant is the owner, amongst others, of the following trademark registrations:

- International Trademark Registration No. 1764390 for ILUMA (word mark), registered on October 12, 2023, in International Class 34;
- Turkish Trademark Registration No. 2019 128833 for ILUMA (word mark), filed on December 18, 2019, and registered on September 22, 2020, in classes 9 and 34.

The disputed domain name <ilumaanakara.com> was registered on August 26, 2024, and currently does not resolve to an active website. According to the screenshots submitted by the Complainant – which have not been contested by the Respondent – prior to the present proceeding, it was pointed to an online shop in Turkish language and aimed at a Turkish public, publishing the Complainant’s trademarks and copyrighted content taken from the Complainant’s official website and offering for sale products from the Complainant’s IQOS System as well as competing third-party products of other commercial origin. The Complainant is currently not selling the 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 is confusingly similar to the ILUMA trademark in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the geographical term “anakara” and the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant also states that the Respondent has no rights or legitimate interests in the disputed domain name since i) the Respondent has not been authorized to use the Complainant's trademark and to register the disputed domain name incorporating the ILUMA mark; ii) the Respondent is seeking to obtain an unfair commercial gain, and iii) the Respondent is not an authorized distributor or reseller of the IQOS System and does not meet the requirements set forth in the leading case *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) for a bona fide offering of goods or services, as the Respondent has used the Complainant's trademarks and official product images on its website without authorization, providing no information regarding the identity of the website operator, which was only identified as "ilumaanakara.com", a name which served to perpetuate the false impression of an official commercial relationship between the Respondent's website and the Complainant. The Complainant also points out that the Respondent has used the disputed domain name to offer for sale also competing tobacco products and/or accessories of other commercial origin whilst giving the impression that the Complainant had officially introduced the IQOS System into the Turkish market, which is not the case since the Complainant does not currently sell the IQOS System in Türkiye.

The Complainant contends that the Respondent registered the disputed domain name in bad faith as the use of the ILUMA trademark, which is purely an imaginative and unique term to the Complainant, and the Respondent's offer of the Complainant's IQOS System on the website to which the disputed domain name resolved, demonstrates that the Respondent was clearly aware of the Complainant and its products at the time of registration. The Complainant also submits that the Respondent used the disputed domain name in bad faith, with the intention of attracting, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website.

The Complainant further states that the Respondent has not only used the Complainant's ILUMA trademark for the purpose of offering for sale the IQOS System, but also for the purpose of offering for sale third-party products of other commercial origin, which is a clear-cut trademark infringement and constitutes further evidence of the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for ILUMA.

The entirety of the ILUMA 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.

Although the addition of the term “anakara” (which can be interpreted as a misspelling of “Ankara”, the capital city of Türkiye) may bear on assessment of the second and third elements, the Panel finds the addition of such term do 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.

In addition, the gTLD “.com” can be disregarded under the first element confusing similarity test, being a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, 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 Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks. Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent’s prior use of the disputed domain name as shown by the screenshots submitted by the Complainant – not contested by the Respondent – does not meet the requirements for a reseller or distributor to be making a bona fide offering of goods or services under a domain name incorporating a third-party trademark.

According to section 2.8.1 of the [WIPO Overview 3.0](#), “resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the “Oki Data test”, the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to ‘corner the market’ in domain names that reflect the trademark”.

In the case at hand, the second and third conditions are not met since the Respondent has pointed the disputed domain name to a website advertising and offering for sale the Complainant’s IQOS System along with competing products and does not appear to have published an accurate and prominent disclaimer on its website aimed at informing users about its lack of relationship with the Complainant. Moreover, the publication of the Complainant’s trademarks and official product images appears to have been designed by the Respondent to reinforce the impression that the website corresponding to the disputed domain name was operated by one of the Complainant’s authorized distributors. In addition to the above, since the disputed domain name resolves to a website which is clearly commercial in nature, the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name.

Thus, in view of the above-described use of the disputed domain name, the Panel finds that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

The Panel notes that the disputed domain name does not currently resolve to an active website. The Panel shares the view held in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), where it was found that, absent some contrary evidence from the respondent, passive holding of a domain name does not constitute a legitimate noncommercial or fair use.

Therefore, the Panel finds the second element of the Policy has been established.

C. Registered and Used 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, considering the prior registration and use of the trademark ILUMA in connection with the smoking products of the Complainant and the fact that the Respondent was offering the Complainant’s IQOS System for sale on the website to which the disputed domain name resolved, reproducing the Complainant’s trademarks and official images, the Panel finds that the Respondent was clearly aware of the Complainant, its trademarks, and its products at the time of registering the disputed domain name.

The Panel also finds that, in view of the use of the disputed domain name in connection with the website described above, offering the IQOS System along with third-party products, the Respondent intentionally registered the disputed domain name to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the ILUMA mark as to the source, sponsorship, affiliation or endorsement of its website and the products offered for sale therein, according to paragraph 4(b)(iv) of the Policy.

As far as the current inactive use is concerned instead, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark in connection with smoking products, the composition and prior use of the disputed domain name, and the Respondent's failure to submit a Response, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy as well.

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 <ilumaanakara.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: November 25, 2024