

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Faruk Pazarlama  
Case No. D2022-3666

### **1. The Parties**

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

The Respondent is Faruk Pazarlama, Türkiye.

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

The disputed domain name <iqs34.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 28, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on November 3, 2022. 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. (hereinafter referred to as "PMI"), an international tobacco conglomerate that sells tobacco products in around 180 countries of the world.

One of its products is the IQOS system, a precisely controlled heating device into which specially designed tobacco products under the trademarks HEETS, HEATSTICKS or TEREA are inserted, and heated to generate flavorful nicotine-containing aerosol. Such products are being marketed in key cities in around 71 markets across the world through official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant owns among others the following trademarks (Annexes 6 and 7 to the Complaint):

- Andorra registration No. 40687 for the word mark IQ, registered on November 5, 2019, in classes 9 and 34;
- European United registration No. 018226787 for the word mark IQ, registered on August 5, 2020, in classes 9 and 34;
- International registration No. 1218246 for the word mark IQOS, registered on July 10, 2014, in classes 9, 11 and 34; and
- International registration No. 1461017 for the device mark IQOS, registered on January 18, 2019, in classes 9 and 34.

The disputed domain name was registered on January 10, 2020, and presently does not resolve to an active webpage. It has been used in connection with an online shop directed to the Turkish market purportedly offering the Complainant's IQOS system as well as including links to third party online shops allegedly offering the Complainant's IQOS System, but also third party products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims to have developed the IQOS system, first launched in Nagoya, Japan in 2014.

Asserting to have invested over USD 9 billion in extensive international sales and marketing efforts to promote its IQOS system, the Complainant states that its new product has obtained considerable international success and reputation, approximately having 19.1 million relevant consumers worldwide.

According to the Complainant, the use of the disputed domain name in connection with an online shop directed to the Turkish market, allegedly selling and offering the Complainant's IQOS system as well as including links to third party websites allegedly offering competing third party products, clearly indicates that the Respondent purports to be an official online retailer of the Complainant's IQOS system in Türkiye, when it is not, by reproducing the Complainant's trademarks, official product pictures and logos. In addition to that, no disclaimer was provided at the website correctly identifying the owner of the IQOS trademarks, and their relationship (or lack thereof) to the Respondent.

Under the Complainant's view, the disputed domain name is confusingly similar to the Complainant's IQ and IQOS trademarks given that 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 trademark is recognizable within the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) the Respondent is not known or in any way related to the Complainant or any PMI affiliate and is not authorized to use the IQ and/or IQOS trademarks;
- (ii) the Respondent is not an authorized distributor or reseller of the IQOS system;
- (iii) the criteria for a *bona fide* offering of goods or services as established in *Oki Data Americas, Inc. v. ASD, Inc*, WIPO Case No. [D2001-0903](#) are not met (given that the Respondent is not only offering the Complainant's products but also including links to third party websites offering competing tobacco products and accessories of other commercial origin);
- (iv) the disputed domain name in itself suggests at least an affiliation with the Complainant and its IQ and IQOS trademarks, as the disputed domain name wholly reproduces the Complainant's registered IQ trademark and is highly similar/phonetically almost identical to the Complainant's registered IQOS trademark together with the non-distinctive additions, namely the letter "s" and/or numerical "34";
- (v) the website to which the disputed domain name resolves has used the Complainant's official product images without authorization what further supports the false impression that the disputed domain name is endorsed by the Complainant, which it is not;
- (vi) the website to which the disputed domain name has resolved does not include any information regarding the identity of the provider of the website which further serves to perpetuate the false impression of an official commercial relationship between the disputed domain name and the Complainant; and
- (vii) as the Complainant's IQOS system is primarily distributed through official / endorsed stores, Internet users / relevant consumers will be misled regarding the relationship between the disputed domain name and the Complainant, and will falsely believe the website under the disputed domain name to be an official / endorsed distributor; in addition to that, the illegitimacy of the Respondent's use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale its IQOS system in Türkiye, and the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS system into the Turkish market.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

- (i) the Respondent knew of the Complainant's trademarks when registering the disputed domain name;
- (ii) the terms IQ and IQOS are purely imaginative terms and unique to the Complainant, not commonly used to refer to tobacco products and therefore it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name without intention of invoking a misleading association with the Complainant;
- (iii) the purpose of the Respondent's registration of the disputed domain name was to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered trademark as to the source, sponsorship, affiliation, or endorsement of its website;
- (iv) by reproducing the Complainant's registered trademarks in the disputed domain name and in the title of the website, the website at the disputed domain name suggests the Complainant or an affiliated dealer of the Complainant as the source of the website which is not the case; being this suggestion also supported by the Respondent's use of the Complainant's official product images.

## **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### A. Identical or Confusingly Similar

The Complainant has established rights over the IQ and IQOS trademarks.

The disputed domain name reproduces in its entirety the Complainant's IQ trademark and consists of a phonetical variation of the Complainant's IQOS trademark being confusingly similar therewith, and the addition of the letter "s" or numerical "34" does not avoid a finding of confusing similarity under the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Furthermore, the website associated with the disputed domain name purportedly offering the Complainant's IQOS system, which confirms confusing similarity, in particular to the Complainant's IQOS trademark, because it appears *prima facie* that the Respondent seeks to target the Complainant's trademarks through the disputed domain name. See [WIPO Overview 3.0](#), section 1.15.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate,

pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain name and is neither an authorized reseller of the Complainant's IQOS system nor has it been licensed or otherwise permitted to use any of the Complainant's trademarks or to register a domain name incorporating its IQ or IQOS trademarks.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with an online shop allegedly offering the Complainant's products, unauthorizedly reproducing the Complainant's official marketing materials and product images, clearly suggest at least an affiliation with the Complainant which in fact does not exist.

Including links to third party websites that sell third party competing products at the online shop that resolved from the disputed domain name and not disclosing the (lack of) relationship with the Complainant do not meet the criteria for a *bona fide* offering of goods or services as established in *Okidata Americas, Inc. v. ASD, Inc, supra*.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

### **C. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the reproduction of the Complainant official marketing materials and purportedly offering the Complainant's products at the online shop that is available at the webpage relating to the disputed domain name, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Moreover, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights, and (ii) false or incomplete information used by the Respondent for registering the disputed domain name, since the Written Notice was not delivered to the Respondent by courier service.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

### **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, <iqs34.com>, be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: November 17, 2022