

## **ADMINISTRATIVE PANEL DECISION**

### **Philip Morris Products S.A. v. Faruk Pazarlama Case No. D2023-0354**

#### **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(s) and Registrar(s)**

The disputed domain name <aykostamir.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 January 26, 2023. On January 26, 2023, 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 disclosing registrant and contact information for the disputed domain name. The Center sent an email communication to the Complainant on January 27, 2023, 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 the same day.

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 January 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.

Following the Center’s emails of January 27, January 31, and February 21, 2023 sent to the Registrar relating to the issue of expiry of the disputed domain name on March 8, 2023, the Registrar has, in its February 22, 2023 dated email sent to the Center, confirmed that it placed a restriction on any transfer of the

disputed domain name pending the proceeding, as well as that it would be “happy to renew the domain if [it is] provided funds for the renewal of the domain”.

In its February 23, 2023 dated email, the Center advised the Parties and the Registrar on the impending expiry of the disputed domain name on March 8, 2023, and urged the Parties to renew the disputed domain name with the Registrar and ensure that it remains active. In its email, the Center has expressly indicated that it “accepts no responsibility for the consequences if the necessary steps to ensure the renewal of the disputed domain name are not taken”. Despite the advice of the Registrar and the Center, it appears that by the time of rendering of this decision none of the Parties took any action to renew the disputed domain name, which is therefore set to expire on March 8, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on February 24, 2023. 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 group of companies affiliated to Philip Morris International Inc. (“PMI”), which is a leading international tobacco and smoke-free products company selling its products in approximately 180 countries of the world.

PMI has developed a number of so-called reduced risk products, which it claims to present, or have the potential to present less risk of harm to smokers who switch to those products instead of continued smoking. One of the PMI’s reduced risk products is the tobacco heating system called IQOS (“IQOS system”).

Among others the Complainant owns the International Trademark Registration (“IR”) No. 1218246 for the mark IQOS registered since July 10, 2014 in relation to tobacco and smokers’ articles and services.

The disputed domain name was registered on March 8, 2022, and resolves to an online shop in Turkish language, that is allegedly offering repair and maintenance services for the Complainant’s IQOS system. The website at the disputed domain name also includes a hyperlink redirecting to a third party online shop using the Complainant’s IQOS trademark and allegedly selling and offering the Complainant’s IQOS system, as well as competing third party products of other commercial origin.

The Complainant’s IQOS system is currently not sold in Türkiye, which seems to be the Respondent’s residence as per the information obtained by the Registrar, and the market to which the website at the disputed domain name is directed to.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name, constructed of the intentional misspelling of its IQOS trademark and the term “tamir”, meaning “fix” in Turkish language is confusingly similar to its trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) of the Policy.

The Complainant claims that the Respondent registered the disputed domain name with knowledge of its IQOS trademark and has been using it to divert consumers looking for the Complainant to its website without any authorization, which is evidence of bad faith registration and use of the disputed domain name.

The Complainant also submits that previous UDRP panels have found that the Respondent has engaged in a pattern of bad faith registration and use of domain names reflecting the Complainant's trademarks.

The Complainant requests that the disputed domain name <aykostamir.com> be transferred from the Respondent to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (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**

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the IQOS trademark, and for the purpose of this proceeding, the Panel finds that the IR No. 1218246 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), 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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level-Domain (“TLD”) in a domain name (“.com” in the present case) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The disputed domain name comprises of the term “aykos”, which is phonetically identical to the Complainant’s IQOS trademark, plus the term “tamir”, meaning “fix” in Turkish language. The phonetically identical variant of the Complainant’s trademark is clearly recognizable in the disputed domain name and the Respondent’s addition of a descriptive term in the disputed domain name does not prevent a finding of confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted uncontested evidence that it holds well-established rights in the IQOS trademark.

According to section 2.1 of the [WIPO Overview 3.0](#), while 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 often impossible 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 the relevant evidence demonstrating rights or legitimate interests in the domain name.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Respondent is not a licensee or distributor of the Complainant. The Respondent is not affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to make use of its IQOS trademark, in a domain name or otherwise.

The Complainant’s IQOS products are not for sale in Türkiye, the market to which the disputed domain name is directed to. Yet the Complainant’s exhibits downloads from the Respondent’s website show the disputed domain name resolving to a website falsely suggesting to Internet users that the Respondent is an affiliate dealer and authorized repair service operator of the Complainant. Such deliberately false activity harmful to the Complainant cannot give rise to any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In the case at hand it is clear that the Respondent was well aware of the Complainant's business and its IQOS trademark at the time of registration of the disputed domain name.

According to earlier UDRP decisions, the Respondent has previously registered multiple domain names found to be confusingly similar to and in abuse of the Complainant's IQOS trademark (see e.g. *Philip Morris Products S.A. v. Faruk Pazarlama*, WIPO Case No. [D2019-1243](#); *Philip Morris Products S.A. v. Faruk Pazarlama*, WIPO Case No. [D2019-3077](#); *Philip Morris Products S.A. v. Faruk Pazarlama*, WIPO Case No. [D2022-0741](#)). As a consequence the Panel finds that the Respondent has engaged in a pattern of registration of trademark abusive domain names within the meaning of paragraph 4(b)(ii) of the Policy.

The Respondent is evidently using the disputed domain name to divert Internet users to its website and via a hyperlink to a third party website for commercial gain. The Panel finds that the Respondent is intentionally attracting for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website at the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant does not currently offer for sale its IQOS system in Türkiye, where the import of heating tobacco products is prohibited by law. The online shop operated by the Respondent under the disputed domain name creates a false impression that the Complainant has officially introduced the IQOS system into the Turkish market. Such a false impression caused by the Respondent's registration and use of the disputed domain name in view of the Panel has the potential to cause damage to the Complainant's reputation within the meaning of paragraph 4(b)(iii) of the Policy.

For the all the above reasons, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

## 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, <aykostamir.com>, be transferred to the Complainant.

In conjunction with the implementation of this decision pursuant to paragraph 4(k) of the Policy, the Panel draws the Registrar's attention to paragraph 3.7.5.7 of the Expired Domain Deletion Policy, which provides that "In the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant".

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: March 6, 2023