

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Eser Öznohut  
Case No. D2023-4720

### 1. The Parties

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

The Respondent is Eser Öznohut, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <iqosveheetsmarket.com> is registered with ODTÜ Geliştirme Vakfı Bilgi Teknolojileri Sanayi Ve Ticaret Anonim Şirketi (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2023. On November 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 15, 2023, 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 (BigdataSoft) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 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 November 17, 2023.

On November 16, 2023, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On November 17, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 both in English and in Turkish of the Complaint, and the proceedings commenced on November 24, 2023.

In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2023. The Respondent sent an email communication to the Center on December 9, 2023. Accordingly, the Center notified the parties of the commencement of panel appointment process on December 18, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on December 19, 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 Philip Morris International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS and HEETS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located. According to the Complaint, the Complainant is, among others, the registered owner of the International Trademark Registrations No. 1218246, registered on July 10, 2014, for IQOS, and No. 1326410, registered on July 19, 2016, for HEETS, both of them covering trademark protection, *inter alia*, for electronic cigarettes as covered in classes 9 and 11 (Annex 6 to the Complaint).

The disputed domain name was registered on June 24, 2023.

The screenshots, as provided by the Complainant, show that the disputed domain name resolved to a website in the Turkish language, which was used for allegedly offering IQOS and HEETS smoke-free products as well as potentially competing third-party products, as indicated by place holders for additional but unspecified electronic cigarettes and liquids (Annex 8 to the Complaint). On the website at the disputed domain name, the Respondent prominently used the IQOS and HEETS word marks as well as further registered trademarks of the Complainant.

At the time of the Decision, the disputed domain name does not resolve to an active website anymore.

#### **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.

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

The Respondent did not reply to the Complainant's contentions. The Center only received an informal email communication from the Respondent on December 9, 2023, only in English language, stating that the "disputed domain name has been cancelled".

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

##### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Turkish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant has no knowledge of Turkish and that requested translation would be time and costs intensive.

The Respondent did not make any submissions with respect to the language of the proceeding, even though communicated by the Center in Turkish and in English. The only communication received from the Respondent is entirely in English and does not contain any comments as to the language of the proceedings.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2. Substantive Issues**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

### **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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the IQOS and HEETS trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the IQOS and HEETS marks 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 other terms, here “ve” (which means “and” in Turkish) and “market”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Based on the available record, 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.

In this regard, the Panel particularly believes that the Respondent cannot be assessed as a legitimate dealer for the Complainant’s products in light of *Okı Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“*Okı Data*”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Okı Data* are apparently not fulfilled in the present case. The Panel notes that the Respondent potentially offered not only products of the Complainant but potentially also competing third-party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name did not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and/or authorized reseller/distributor for the Complainant’s products in Türkiye. This assessment is further supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In view of the Panel, all this takes the Respondent out of the *Okı Data* safe harbour for purposes of the second element.

Based on the available record, 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.

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, the Panel notes that the Respondent must have had the Complainant and its IQOS and HEETS trademarks in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant's trademarks in their entirety, to target and mislead Internet users searching for the Complainant and its products.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent used the disputed domain name in order to generate traffic to its own website by deliberately misleading third parties in a false belief that the associated website is either operated or at least authorized by the Complainant. The prominent use of the Complainant's IQOS and HEETS word marks (as well as the use of further registered trademarks of the Complainant), the offering of potentially competing third-party products and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its IQOS and HEETS trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

The fact that the disputed domain name currently no longer resolves to an active website does not prevent a finding of bad faith.

Consequently, the Panel is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

Based on the available record, 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, <iqosveheetsmarket.com>, be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: January 2, 2024