

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. deniz altunoglu, RAK P MARKET NG
Case No. D2024-0421

1. The Parties

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

The Respondent is deniz altunoglu, RAK P MARKET NG, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <ilumatereakibris.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 30, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 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 February 12, 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 February 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 February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 19, 2024.

The Center appointed Enrique Ochoa de González Argüelles as the sole panelist in this matter on March 25, 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 company which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as the "Complainant").

The Complainant is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

The Complainant has been 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).

The Complainant has developed a number of RRP products. One of these RRP products developed and sold by the Complainant is a tobacco heating system called IQOS.

IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System").

There are five versions of the IQOS heating device 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 and IQOS ILUMA.

The IQOS System has achieved considerable international success and reputation.

To date, the IQOS System has been almost exclusively distributed through the Complainant's official IQOS stores and websites and selected authorized distributors and retailers.

For its new innovative smoke-free products the Complainant owns a large portfolio of well-known trademarks, with the following examples being of particular relevance in this proceeding:

- Türkiye Registration ILUMA (word) No. 2019 128833 registered on September 22, 2020 (with priority of September 16, 2019);
- Türkiye Registration IQOS ILUMA (word) No. 2019 128850 registered on November 6, 2020 (with priority of September 16, 2019); and
- Türkiye Registration TEREAA (word) No. 2019 128867 registered on September 17, 2020.

For the purposes of this Decision, the registered trademarks described above, as well as others containing the names ILUMA and / or TEREAA, shall be referred to as "ILUMA / TEREAA TRADEMARKS".

The disputed domain name was created on January 20, 2024.

The disputed domain displays the content that clearly refers to PMI's products under the ILUMA / TEREAA TRADEMARKS in an online shop that also offers competing products of third parties.

The Respondent has no known connection to the Complainant.

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, among others, that:

- The disputed domain name is linked to an online shop (referred to as the "Website") allegedly selling and offering the Complainant's IQOS System, as well as third party products of other commercial origin.
- The Website is displayed in both English and Turkish languages.
- The fact that the Website is indicating all prices in Turkish lira currency, clearly indicates that the Website is directed to Türkiye. Importantly however the Complainant's IQOS System is not currently sold in Türkiye.
- The Website is clearly purporting to be an official online retailer of the Complainant's IQOS System in Türkiye by using the ILUMA / TERE A TRADEMARKS in the disputed domain name, together with the non-distinctive word "kibris" (informal translation to English: "Cyprus").
- The Website is prominently using the Complainant's registered ILUMA and TERE A trademarks at the top of the Website (i.e.), being a location where users / relevant consumers usually expect to find the name of the online shop and/or the name of the provider of the Website.
- In the online shop provided under the disputed domain name, the Respondent is not only offering the IQOS System but also third party products of other commercial origin.
- The Website is further using a number of the Complainant's official product images without the Complainant's authorization, while at the same time providing a copyright notice at the bottom of the Website claiming copyright in the material presented on the Website and thereby strengthening the false impression of an affiliation with the Complainant.
- The Website does not show any details regarding the provider of the Website nor does it acknowledge the Complainant as the real brand owner of the IQOS System, leaving the Internet user under the false impression that the online shop provided under the Website, is that of the Complainant or that it is connected to that of the Complainant or one of its official distributors, which it is not.
- Importantly, the provider of the Website is using the Complainant's ILUMA and TERE A trademarks in its name in circumstances where the provider of the Website is not known to the Complainant, nor is it authorized to use the Complainant's ILUMA / TERE A TRADEMARKS.
- The Complainant has made a prima facie case that the Respondent lacks any right or legitimate interest 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 and/or TERE A trademarks (or a domain name which will be associated with these trademarks).
- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.
- The Respondent's behavior shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant.

- It is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's ILUMA and TEREА trademarks when registering the disputed domain name.
- The Respondent started offering the Complainant's IQOS System immediately after registering the disputed domain name.
- The terms ILUMA and TEREА are purely an imaginative term and unique to the Complainant.
- By reproducing the Complainant's registered trademark in the disputed domain name and the title of the Website, the Respondent is clearly suggesting to any internet user visiting a website provided under the disputed domain name that the Complainant (or an affiliated dealer of the Complainant) is the source of the Website, which it is not. This suggestion is further supported by the Respondent's use of the Complainant's official product images, accompanied by a copyright notice claiming the copyright for the Website and its contents.
- The Respondent is not only using the Complainant's ILUMA and/or TEREА trademark for the purposes of offering for sale the IQOS System, but also for purposes of offering for sale third party products of other commercial origin.
- The fact that Respondent is using a privacy protection service to hide its true identity may in itself constitute a factor indicating bad faith (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.6, and the cases referenced therein).

B. Respondent

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

6. Discussion and Findings

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.

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 entirety of the 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.

The Complainant has accredited rights to the ILUMA / TEREА TRADEMARKS. The Panelist notes that the disputed domain name includes the trademarks in their entirety. Regardless of the inclusion of the word "kibris" ("Cyprus" in Turkish language) the trademarks remain recognizable within the disputed domain name, which inevitably causes it to be confusingly similar with the ILUMA / TEREА TRADEMARKS.

Furthermore, as decided in previous cases, the addition of the generic Top-Level Domain ("gTLD") ".com" is irrelevant to the make a comparison between signs for the purposes of the first element, as set out in section 1.11.1 of the [WIPO Overview 3.0](#).

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. As described above, the disputed domain name resolves to a website allegedly offering for sale the Complainant’s trademarked goods, as well as those of competitors, while displaying the Complainant’s trademarks and copyrighted images without any source-identifying information, such as a disclaimer, which cannot confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.8.

Given that the Complainant’s goods are not sold in the geographic area targeted by the website to which the disputed domain name resolves, it is more likely than not that the disputed domain name is engaged in the fraudulent collection of personal and payment information from unsuspecting Internet users misled into believing they are engaging with an official or sponsored reseller of the Complainant’s products. Panels have held that the use of a domain name for illegal activity as applicable to this case: sale of counterfeit goods or impersonation or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 disputed domain name is intentionally misleading Internet users.

In this case, the Panel holds that the Respondent registered the disputed domain name in bad faith because the ILUMA / TERE TRADEMARKS are distinctively identifying the Complainant and the Complainant’s products so that the choice of the disputed domain name cannot be reasonably explained otherwise than as a reference to these trademarks owned by the Complainant.

In addition, the Respondent’s use of the disputed domain name in allegedly selling goods under the ILUMA / TERE TRADEMARKS and others of third parties without authorization from the Complainant is a sign of the Respondent’s bad faith use of the disputed domain name.

In relation to the use of the disputed domain name, the Complainant has proved to the satisfaction of the Panel, by means of printouts of the website to which the disputed domain name resolves, that the Respondent is using the disputed domain name to intentionally attempt to attract, for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement.

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 illegal activity such as sale of counterfeit goods or impersonation or other types of fraud can never confer rights or legitimate interests on a respondent 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 <ilumatereakibris.com> be transferred to the Complainant.

/Enrique Ochoa de González Argüelles/

Enrique Ochoa de González Argüelles

Sole Panelist

Date: April 8, 2024