

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Shahrooz Sadat, GreenHost Case No. D2023-2389

1. The Parties

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

The Respondent is Shahrooz Sadat, GreenHost, Denmark.

2. The Domain Name and Registrar

The disputed domain name <driqos.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 2, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 June 13, 2023.

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 July 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 7, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on August 29, 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 Philip Morris International (“PMI”), a leader in the field of tobacco, which has been in operation since 1972. PMI has developed Reduced Risk Products amongst which is the IQOS system, which was launched in 2014. The Complainant owns many trademark registrations for IQOS such as International trademark registration No. 1218246, registered on July 10, 2014.

The disputed domain name was registered on May 9, 2023, and resolves to a webpage which offers IQOS branded products as well as third party products.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark IQOS and has registered it in many countries. The disputed domain name incorporates the Complainant’s trademark. The addition of the letters “dr” is not enough to eliminate confusing similarity. The generic Top-Level Domain (“gTLD”) “.com” should typically be ignored.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized or licensed by the Complainant to use its trademark. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Respondent is attempting to obtain unfair commercial gain through misleading consumers. The Respondent is not an authorized reseller or distributor of the Complainant. The website of the Respondent is selling competing products. There is no *bona fide* offering of goods or services. For a reseller or a distributor to make a *bona fide* offering of goods or services, it must meet the *Oki Data* test which is not met in the instant case as the website offers competing products. Furthermore, the disputed domain name suggests affiliation with the Complainant and hence there can be no fair use. Also, the Complainant’s official product images and marketing materials are being used on the website to which the disputed domain name resolves. There is no information on the identity of the provider of the said website.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainant’s trademark as the disputed domain name offers the Complainant’s IQOS system. The term IQOS is purely imaginative. The disputed domain name was registered with the intent to mislead consumers for commercial gain by creating confusion with the Complainant’s trademark and products. The Respondent is suggesting that the Complainant is the source of the website and is using the images of the Complainant’s products to reinforce such suggestion and is selling third party products through its website. Lastly, the Respondent is using a privacy protection service to hide its true identity, which may in itself constitute a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for IQOS. The Panel is satisfied that the Complainant has established its ownership of the trademark IQOS.

The disputed domain name incorporates the Complainant's trademark in its entirety together with the letters "dr", which do not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademark. The gTLD ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not licensed nor authorized by the Complainant to use its trademark. The Respondent should prove that it has rights or legitimate interests.

According to the Policy, the use of the disputed domain name would be legitimate if it is used in connection with a *bona fide* offering of goods or services. The website to which the disputed domain name resolves offers products of the Complainant. Therefore, there may be an argument that the disputed domain name is being used in connection with a *bona fide* offering of products. In line with the *Okidata* test, a number of requirements have to be met (see *Okidata*, *supra*):

- (i) "Respondent must actually be offering the goods or services at issue";
- (ii) "Respondent must use the site to sell only the trademarked goods";
- (iii) "The site must accurately disclose the registrant's relationship with the trademark owner"; and
- (iv) "The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name".

The Panel analyzes each of these requirements below:

- Requirement No. 1: This requirement is met;
- Requirement No. 2: This requirement is not met in the instant case as the disputed domain name resolves to a website, which offers the Complainant's products together with other products or accessories;
- Requirement No. 3: This requirement is not met as the website does not include a statement demonstrating that it does not belong or is not affiliated with the Complainant;
- Requirement No. 4: This requirement is met as there are no numerous registrations by the Respondent of domain names containing the trademark of the Complainant.

Requirements No. 2 and 3 have not been met. Therefore, it is the Panel's view that the requirements of the *Okidata* test have not been met.

Moreover, the Respondent did not reply to the Complainant's contentions.

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent clearly knew of the Complainant's business and trademark as the disputed domain name resolves to a website offering the products of the Complainant. The nature of the disputed domain name suggests affiliation with the Complainant as it incorporates the Complainant's trademark and the Complainant's trademark is a fanciful word that has no dictionary meaning, which renders it distinctive. The display of the Complainant's product images reinforces the impression that the disputed domain name is affiliated with the Complainant.

The disputed domain name resolves to a website, which offers not only the Complainant's products but also other products of the same nature. Offering competing products is an indication of bad faith use. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer competing services. This is an act of bad faith (see *Intex Recreation Corp. v. RBT, Inc., Ira Weinstein*, WIPO Case No. [D2010-0119](#); *MasterCard International Incorporated v. Global Access*, WIPO Case No. [D2008-1940](#)).

Such conduct falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, and accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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, <driqos.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: August 22, 2023