

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)

Case No. D2023-3237

1. The Parties

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

The Respondent is 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <iihnb.com> is registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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/IQOS, 上海聿家贸易有限公司) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 28, 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 in English on July 28, 2023.

On July 28, 2023, the Center sent another email communication to the Parties in Chinese and English regarding the language of the proceeding. On July 28, 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 in English and Chinese of the Complaint, and the proceedings commenced on August 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 7, 2023.

The Center appointed Sok Ling MOI as the sole panelist in this matter on September 18, 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., which is one of the world's leaders in manufacturing and selling tobacco products, including its Marlboro cigarettes launched in 1972. In seeking to transform its business from combustible cigarettes, the Philip Morris Group of companies developed and launched the IQOS heating device, which allows specially designed tobacco products to be inserted and heated to generate a flavourful nicotine-containing aerosol. The IQOS system also consists of an IQOS pocket charged specially designed to charge the IQOS holder (collectively referred to as "the IQOS product"). The IQOS product was first launched in Japan in 2014, and is now available for sale in official IQOS stores, websites and authorized distributors and retailers in 71 markets across the world. The IQOS product is however not yet available for sale in China, where the Respondent is purportedly based.

For its smoke-free products, the Complainant owns a large portfolio of trade marks, including the IQOS word and logo marks and the HNB word mark, in several jurisdictions around the world, including the following trade mark registrations:

Jurisdiction	Mark	Registration No.	Registration Date
China	IQOS	16314286	May 14, 2016
International	IQOS	1218246	July 10, 2014
China	IQOS	16314287	May 14, 2016
International	IQOS (stylised)	1338099	November 22, 2016
International	IQOS (stylised-colour)	1329691	August 10, 2016
International	HNB	1261439	December 19, 2014

The disputed domain name was registered on December 29, 2022. According to the evidence submitted by the Complainant, the disputed domain name resolves to a website which reproduced the Complainant's trade marks and copyrighted official product images and marketing videos, and purports to offer for sale the Complainant's IQOS products and other third party tobacco products. A third party cleaning product which infringes the Complainant's IQOS trade mark is also offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trade mark.

The Complainant contends that as the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the disputed domain name has been registered and used to create confusion and mislead Internet users into believing that the Respondent's website is in some way connected with or endorsed by the Complainant. The Complainant therefore contends that the Respondent has registered and is using the disputed domain name in bad faith.

For all of the above reasons, the Complainant requests for the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Issue - Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese scripts;
- (b) according to the evidence submitted by the Complainant, the website to which the disputed domain name resolves reproduced the Complainant's official product images and marketing videos which have contents in English; and
- (c) according to the evidence submitted by the Complainant, the Respondent was involved in a previous UDRP dispute (see *Philip Morris Products S.A. v. 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)*, WIPO Case No. [D2022-0737](#)) involving the domain names <iqssc.com> and <iqsod.com> concerning similar factual scenario where the panel decided on English being the language of the proceeding.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the language of the proceeding and commencement of the proceeding in both Chinese and English;
- (b) the Respondent has been given the opportunity to present its case in this proceeding and to respond to the issue of the language of the proceeding;
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese, but none was filed by the Respondent.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

6.2 Substantive Issue – Three Elements

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be transferred:

- (i) the disputed domain name registered by the respondent is identical or confusingly similar to a trade mark 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.

On the basis of the evidence introduced by the Complainant, the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in HNB by virtue of its registration of the same as a trade mark.

The disputed domain name effectively incorporates the Complainant's trade mark HNB in its entirety. The addition of the prefix "ii" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trade mark. The addition of the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and is typically disregarded in the confusing similarity assessment.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* case showing under paragraph 4(a)(ii), the burden of production shifts to the respondent to establish its rights or legitimate interests in the disputed domain name. It may do so by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if it has acquired no trade mark 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 trade mark or service mark at issue.

The Complainant has clearly established that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the IQOS or HNB trade mark. There is also no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term “iqos”, “hnb” or “iihnb”.

The Panel notes that the Respondent is using the disputed domain name to publish a website that reproduces the Complainant’s IQOS trade marks and copyrighted official product images and marketing videos, and purports to offer the IQOS products for sale. There does not appear to be any clear statement or disclaimer on the Respondent’s website to indicate that it is, in fact, not affiliated with the Complainant. Moreover, the Respondent also offers competing third party tobacco products and a third party cleaning product potentially infringing the IQOS trade mark. The Respondent would not be able to avail itself of the safe harbour defence established by the *Ok! Data* case (*Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The Panel does not find such use to be *bona fide* use of the disputed domain name for the purposes of the Policy.

The Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish its rights or legitimate interests in the disputed domain name. Since the Respondent has failed to respond, the *prima facie* case has not been rebutted. The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the 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 the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.

There is no doubt that that the Respondent was aware of the Complainant and its trade mark when it registered the disputed domain name, given that it has purported to offer the IQOS products for sale on its website. The Panel determines that the Respondent’s purpose of registering the disputed domain name was to trade on the reputation of the Complainant and its trade mark by diverting Internet users seeking the Complainant’s IQOS products and services to its own website for financial gain. Internet users may be misled into thinking that the Respondent’s website, which is in Chinese, is the official online retailer of the Complainant’s IQOS products targeted at the China market. The reproduction of the Complainant’s trade marks and copyrighted official product images and marketing videos on the Respondent’s website without displaying a clear disclaimer of a lack of relationship between the Respondent and the Complainant is a further indication of bad faith.

The Panel is satisfied that the Respondent intends to take advantage of the Complainant's trade mark to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website. As such, the Panel is satisfied that the Respondent is using the disputed domain name in bad faith for financial gain, and the Panel finds that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case.

The Panel further notes that the Respondent was involved in previous UDRP disputes involving the domain names <iqssc.com> and <iqsod.com> (see *Philip Morris Products S.A. v. 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)*, WIPO Case No. [D2022-0737](#)) and the domain names <iqqchn.com> and <iqsnn.com> (see *Philip Morris Products S.A. v. 赵波 (Zhao Bo) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)*, WIPO Case No. [D2023-1648](#)), where the respective panels made a finding of bad faith registration and use of the relevant domain names in those cases. This suggests that the Respondent has engaged in a pattern of cybersquatting conduct to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name. As such, the Panel finds that the circumstances referred to in paragraph 4(b)(ii) of the Policy are also applicable to the present case.

The Respondent has not filed a response to deny the Complainant's allegations of bad faith. Taking into account all the circumstances, it is adequate to conclude that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under paragraph 4(a) 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 <iihnb.com> be transferred to the Complainant.

Sok Ling MOI

Sok Ling MOI

Sole Panelist

Date: October 11, 2023