

## 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) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)  
Case No. D2022-0737

### 1. The Parties

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

The Respondents are 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), China (“the First Respondent”), and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), China (“the Second Respondent”).

### 2. The Domain Names and Registrar

The disputed domain names <iqsod.com> and <iqssc.com> are registered with Xin Net Technology Corp. (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrants and contact information for the disputed domain names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2022 providing the registrants 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 March 8, 2022.

On March 7, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on March 8, 2022. The Respondents did not comment on the language of the proceeding.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on April 5, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on April 12, 2022. 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 leading international tobacco companies, with products sold in approximately 180 countries around the world. The Complainant offers both traditional combustible cigarettes and a line of smoke-free products, one of which is branded "IQOS". The IQOS-system consists of a controlled heating device into which a designated tobacco product, branded either "Heets", "Heatsticks" or "Terea", is inserted and heated to generate a nicotine-containing aerosol. The Complainant states that the IQOS-system has achieved considerable international success and fame, and that it currently has an estimated amount of 19.1 million regular users worldwide.

The Complainant provides evidence that it owns a large portfolio of trademark registrations for IQOS (word and device marks) in a large number of jurisdictions around the world, including in China, where the Respondents are located, for example Chinese trademark registration 16314286, for the word mark IQOS, registered on May 14, 2016 and international trademark registration 1218246, for the word mark IQOS, registered on July 10, 2014.

The disputed domain name <iqsscn.com> was registered on November 4, 2020 and the disputed domain name <iqsod.com> was registered on May 25, 2021. Both disputed domain names are therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain names direct to webpages clearly displaying the Complainant's IQOS trademarks and logos, used by the Respondents as e-commerce websites for unauthorized sales of purported IQOS-branded products as well as competing third party products of other commercial origin, including an unauthorized third party cleaning product also bearing the Complainant's IQOS trademark.

#### **5. Parties' Contentions**

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

The Complainant essentially contends that the disputed domain names are confusingly similar to its trademarks for IQOS, that the Respondents have no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names were registered, and are being used in bad faith.

The Complainant claims that its trademarks are famous and well-regarded in the consumers and tobacco industry, and provides printouts of its official website and of its marketing materials. Moreover, the Complainant provides evidence that the disputed domain names are linked to active websites, operating as e-commerce websites, unlawfully using the Complainant's word marks and logo marks for IQOS in a prominent way on such websites, displaying the Complainant's product images protected by copyright, showing a misleading copyright notice on the website hosted at the disputed domain name <iqsscn.com> and offering unauthorized IQOS products and third party products for sale to Internet users. The Complainant essentially contends that such use does not confer any rights or legitimate interests in respect of the disputed domain names and constitutes use in bad faith. Finally, the Complainant also contends that the Respondents or the person behind the Respondents, are/is the same person, or are/is connected to the

same person, who was the respondent in a prior UDRP proceeding *Philip Morris Products S.A. v. 杨溪 (yang xi)*, WIPO Case No. [D2021-3107](#) (<iqoscncn.com>) based on the similar contents of the website hosted at the disputed domain name <iqsscncn.com> and the website hosted at the disputed domain name <iqoscncn.com>.

The Complainant requests the transfer of the disputed domain names.

## **B. Respondents**

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

## **6. Discussion and Findings**

### **6.1 First Preliminary Issue: Consolidation of Respondents**

The Complainant requests consolidation in regard to the Respondents, as the disputed domain names are currently owned by seemingly multiple registrants. In this regard, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") states in section 4.11.2: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario." (see in this regard also prior UDRP decisions such as *Speedo Holdings B.V. v. Programmer, Miss Kathy Bekerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

The Panel has carefully reviewed all elements of this case, giving particular weight to the following elements and facts: (A) both of the disputed domain names consist of an intentional misspelling of the Complainant's trademarks, thereby exposing a pattern; (B) the Registrar for the disputed domain names is identical (*i.e.*, Xin Net Technology Corp.); (C) the website hosted at the disputed domain name <iqsod.com> contains hyperlinks that redirect Internet users to the website hosted at the other disputed domain name <iqsscncn.com>; (D) each of the respective websites hosted at the disputed domain names make use of the same or similar product images owned by the Complainant; (E) both disputed domain names target the same IQOS trademarks of the Complainant; and (F) the registrant organization for both disputed domain names is identical (*i.e.*, 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)). The Panel also notes that the Respondents did not submit any arguments and did not contest the request for consolidation.

In view of these elements, the Panel finds that the Respondents are the same or connected and the websites linked to the disputed domain names are under common control, that in this case consolidation would be fair and equitable to all Parties involved and would safeguard procedural efficiency. The Panel therefore decides to grant the request for consolidation of the Respondents and shall hereafter refer to the Respondents jointly as "the Respondent".

### **6.2 Second Preliminary Issue: Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, 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.

According to the Registrar's verification response, the language of the Registration Agreements for the disputed domain names is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and in English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain names are written in Latin letters and not in Chinese characters and that the websites linked to the disputed domain names contain words and phrases in English; and, finally, the fact that Chinese as the language of proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

### **6.3 Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- a) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- c) the disputed domain names have been registered and are being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in the mark IQOS, based on its use and registration of the same as a trademark in various jurisdictions, including in China.

Further, as to confusing similarity of the disputed domain names with the Complainant's trademarks, the Panel finds that the disputed domain names both consist of the combination of two elements, namely an apparently intentionally misspelled version of the Complainant's IQOS trademarks, namely "iqso" and "iqss", each time either followed by a suffix "d" for the disputed domain name <iqsod.com>, or a suffix "cn", for the disputed domain name <iqsscn.com>. On this issue, the Panel refers to the [WIPO Overview 3.0](#), section 1.9 which states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." The Panel concludes that both disputed domain names were clearly selected by the Respondent by intentionally misspelling the Complainant's trademark for IQOS, each time pairing such misspelled version of the Complainant's trademark with an suffix ("d" or "cn"), which does not prevent a find of confusing similarity under the first element. According to the Panel, this is a clear case of intentional misspelling of the Complainant's trademark, or "typosquatting". Finally, the Panel also notes that the applicable Top-Level Domain ("TLD") (here ".com" for each of the disputed domain names) may be disregarded by the Panel under the first element test (see [WIPO Overview 3.0](#), section 1.11.1).

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. The Panel rules that the Complainant has satisfied the requirements of the first element under the Policy.

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

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain names and is not making a legitimate noncommercial use or fair use of the disputed

domain names. The Panel also notes that the Respondent is not commonly known by the disputed domain names. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Moreover, upon review of the facts of this case, the Panel notes that the Complainant provides evidence that the disputed domain names direct to webpages which show a clear intent on the part of the Respondent to obtain unlawful commercial gain from incorporating the Complainant's IQOS trademarks in the disputed domain names, namely to purportedly offer IQOS-branded products and other unrelated third party products to Internet users. Furthermore, the Respondent prominently displays the Complainant's IQOS logos and word marks, uses the Complainant's product images presumably protected by copyright without authorization, and also places a misleading copyright notice at the bottom of the webpage hosted at the disputed domain name <iqsscncn.com>, thereby misleading Internet users into believing that it is licensed by, or affiliated with the Complainant or its IQOS trademarks. In the Panel's view, these elements clearly show that the Respondent's intention is not to make any use of the disputed domain names for a *bona fide* offering of goods or services, or to make a legitimate noncommercial use or fair use of the disputed domain names. Instead, it shows the Respondent's intention to include the Complainant's trademarks into the disputed domain names to mislead Internet users and to obtain unlawful commercial gain.

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

Given the reputation and fame of the Complainant's prior registered trademarks, the Panel finds that the registration of the disputed domain names, which both contain misspelled versions of such trademarks, clearly and consciously targeted the Complainant's prior registered trademarks for IQOS. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain names. The Panel also considers the disputed domain names to be so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of these disputed domain names points toward the Respondent's bad faith. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain names in bad faith.

As to use of the disputed domain names in bad faith, the Complainant provides evidence that the disputed domain names direct to webpages clearly displaying the Complainant's IQOS trademarks and logos, used by the Respondent as e-commerce websites for unauthorized sales of purported IQOS-branded products as well as competing third party products of other commercial origin, including an unauthorized third party cleaning product also bearing the Complainant's IQOS trademark. Such websites also prominently use the Complainant's official product images and display elements such as a copyright notice (at the bottom of the webpage hosted at the disputed domain name <iqsscncn.com>), which wrongly suggest that the Respondent is affiliated or connected with the Complainant. The Panel concludes that the Respondent intentionally attracted Internet users for commercial gain to the disputed domain names, by creating consumer confusion between the disputed domain names and the Complainant's prior registered trademarks (see paragraph 4(b)(iv) of the Policy).

Further, the Panel notes that the Complainant asserts that the Respondent or the person behind the Respondent is the same as or connected to the respondent in a prior UDRP proceeding *Philip Morris Products S.A. v. 杨溪 (yang xi)*, WIPO Case No. [D2021-3107](#) (<iqoscncn.com>) for the reasons described under section 5A. However, based on the case file, the Panel finds that it is not clear if the Respondent is connect to the respondent in [D2021-3107](#).

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith.

The Panel therefore rules that the Complainant has satisfied the requirements of the third requirement under 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 names, <iqsod.com> and <iqsscn.com>, be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: April 26, 2022