

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Domains By Proxy, LLC / wudi li
Case No. D2022-1348

1. The Parties

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

The Respondent is Domains By Proxy, LLC, United States of America / wudi li, China.

2. The Domain Name and Registrar

The disputed domain name <iiqoss.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2022 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 April 21, 2022.

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 April 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on May 20, 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 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.

The Complainant has registered the IQOS trade 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 designating, <i>inter alia</i> , European Union	IQOS	1218246	July 10, 2014
International designating, <i>inter alia</i> , European Union, Singapore, United States of America	IQOS (stylised)	1338099	November 22, 2016
International designating, <i>inter alia</i> , European Union, Singapore, United States of America	IQOS (stylised)	1329691	August 10, 2016

The disputed domain name was registered on March 20, 2022. According to the evidence submitted by the Complainant, the disputed domain name resolved to a website which purported to offer the IQOS products 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

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;
- (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 IQOS by virtue of its use and registration of the same as a trade mark.

The disputed domain name effectively incorporates the Complainant's trade mark IQOS in its entirety. The addition of the prefix "i" and suffix "s" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trade mark. The addition of the generic TopLevelDomain ("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.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited 诉 honghao internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

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 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 "iiqoss".

The Panel notes that the Respondent is using the disputed domain name to publish a website that purports to offer the IQOS products for sale. There does not appear to 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 offered competing tobacco products and accessories of third parties. The Respondent would not be able to avail itself of the safe harbour defence established by the *Oki 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 trade mark 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. 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. The reproduction of the Complainant's trade mark and copyrighted images of the IQOS product on the Respondent's website without also 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 fame 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.

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, <iiqoss.com>, be transferred to the Complainant.

/Sok Ling MOI/

Sok Ling MOI

Sole Panelist

Date: June 15, 2022