

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. david chen  
Case No. D2022-3665

### **1. The Parties**

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

The Respondent is david chen, China.

### **2. The Domain Name and Registrar**

The disputed domain name <iqosq.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 October 7, 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 4, 2022.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on November 14, 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, Philip Morris Products S.A., a Swiss company established under the laws of Switzerland, is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI"). PMI is one of the leading international tobacco companies, with products sold in approximately 180 countries.

In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs", which PMI 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 instead of continuing to smoke), PMI has developed a number of products. One of these RRP's developed and sold by PMI is branded IQOS. IQOS is a controlled heating device into which specially designed tobacco products under the brand names "HEETS" and "HeatSticks" are inserted and heated to generate a nicotine-containing aerosol.

The Complainant has proven to be the owner of the IQOS, HEETS, and ILUMA marks.

The Complainant is *inter alia* the owner of:

Japanese Registration for IQOS (word), No. 6100975, registered on November 22, 2018;

Japanese Registration for ILUMA (word), No. 6320044, registered November 24, 2020;

Taiwan province of China Registration for IQOS (device), No. 01845937, registered on June 1, 2017;

Taiwan province of China Registration for IQOS (device), No. 02003604, registered on August 1, 2019;

Taiwan province of China Registration for HEETS (word), No. 01833718, registered on April 1, 2017;

Taiwan province of China Registration for HEETS (device), No. 01833719, registered on April 1, 2017;

International Registration for IQOS (device), No. 1338099, registered on November 22, 2016; and

International Registration for IQOS (device), No. 1557546, registered on August 27, 2020.

The disputed domain name was registered on September 3, 2022.

The Complainant's trademark registrations predate the registration of the disputed domain name.

The disputed domain name is linked to an online shop allegedly offering the Complainant's IQOS, HEETS, and ILUMA branded products. On this website, the designation IQOS JAPAN as well as an indication in Chinese meaning "Heating Tobacco Taiwan direct marketing website" are displayed.

The content of the Respondent's website is in Chinese, and all prices are indicated in New Taiwan Dollar (NTD).

However, the Complainant's IQOS System is not currently sold in Taiwan, province of China.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the IQOS trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

### B. Respondent

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

## 6. Discussion and Findings

In order for the Complainant to obtain the transfer of the disputed domain name, paragraphs 4(a)(i)-(iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

### A. Identical or Confusingly Similar

The Complainant has established rights in the IQOS trademark.

The disputed domain name entirely consists of the Complainant's trademark IQOS in combination with the letter "q" as well as the generic Top-Level Domain ("gTLD") ".com".

The gTLD suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy, and the addition of the letter "q" to the Complainant's trademark does not prevent a finding of confusing similarity under the first element of the UDRP. In this sense, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9: "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 finds that the Complainant's IQOS trademark is clearly recognizable in the disputed domain name, and the addition of the letter "q" does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

This Panel finds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to be commonly known by the disputed domain name, the name "IQOS", or by a similar name. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. The Respondent offers for sale what appears to be the Complainant's products without disclosing the relationship between the Complainant and the Respondent, as well as tobacco products and/or accessories of other third party

commercial origin. Moreover, the illegitimacy of the Respondent's use of the disputed domain name is further shown by the fact that the Complainant does not currently offer its IQOS branded products for sale in Taiwan, province of China, while the online shop hosted at the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS products into the Taiwanese market.

Finally, the Respondent has not replied to the Complainant's contentions, alleging any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and has been used in bad faith.

Indeed, the Complainant gives several bases for its contention that the disputed domain name was registered and has been used in bad faith.

Particularly relevant are the Complainant's unchallenged assertions (which the Panel accepts and partially reports below) that:

the Respondent could not be unaware of the existence of the Complainant's trademarks when registering the disputed domain name; and

the term "iqos" is not commonly used to refer to tobacco products or electronic devices. It is therefore unlikely that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant. In fact, it is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's IQOS trademarks when registering the disputed domain name. It appears that the Respondent started offering the Complainant's IQOS branded products (which are exclusively designed to be used with the Complainant's HEETS branded products) immediately after registering the disputed domain name.

The Panel agrees with the Complainant's assertion that it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant. The mere fact that the disputed domain name consists of a typographical variation of the Complainant's IQOS mark, merely adding the adjacent letter "q" to the "s" on a standard QWERTY keyboard, reflects the Respondent's intention to target the Complainant and mislead Internet users unaware of the typographical error in the disputed domain name.

It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and has used the disputed domain name with the intention to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

This 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.

The illegitimacy of the Respondent's use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale its IQOS branded products in Taiwan province of China, and the online shop hosted at the disputed domain name creates the false impression that the Complainant has launched these products in Taiwan province of China.

This Panel finds that the above use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under paragraph 4(b)(iii) of the Policy.

In addition, the Respondent has used a privacy shield registration service for the disputed domain name. While the use of a privacy or proxy registration service is not in and of itself an indication of bad faith, it is the Panel's opinion that in the present case the use of a privacy shield, combined with the elements previously discussed, amounts to a further inference of bad faith registration and use.

Finally, the Respondent has not responded to (nor denied) the assertions made by the Complainant in this proceeding.

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

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: November 23, 2022