

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Hcc liu, 1
Case No. D2024-1243

1. The Parties

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

The Respondent is Hcc liu, 1, Taiwan Province of China.

2. The Domain Name and Registrar

The disputed domain name <twiqos.shop> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 2024, 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 March 28, 2024, 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 March 30, 2024.

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 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2024.

The Center appointed Alexander Duisberg as the sole panelist in this matter on May 8, 2024. 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 Philip Morris Products S.A. a Swiss company established under the laws of Switzerland and a subsidiary of Philip Morris International, Inc. ("PMI"). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. One of the products developed and sold by PMI is a tobacco heating system developed and sold under the name of "IQOS". IQOS is a precisely controlled heating device into which specially designed tobacco sticks are inserted and heated to generate a nicotine-containing aerosol (collectively referred to as "IQOS System")

The Complainant is the owner of the following trademark registrations ("IQOS Trademarks"):

International Registration IQOS (word) No. 1218246 registered on July 10, 2014;
International Registration ILUMA (word) No. 1764390 registered on October 12, 2023;
International Registration ILUMA ONE (word) No. 1544146 registered on June 8, 2020;
International Registration IQOS ILUMA PRIME (word) No. 1544199 registered on June 8, 2020;
Taiwan Province of China Registration IQOS (word) No. 01718976 registered on July 16, 2015; and
Taiwan Province of China Registration IQOS (word) No. 01921980 registered on June 16, 2018.

The Complainant provided a full list of trademarks registered worldwide.

The disputed domain name <twiqos.shop> was registered on February 21, 2024. The Complainant had effected all IQOS Trademarks before the disputed domain name was registered. The Complainant has submitted screenshots of the Respondent's website under the disputed domain name which leads to an online shop allegedly selling the Complainant's IQOS System and third party products of other commercial origin which are described as IQO ILUMA ONE, IQO ILUMA PRIME and/or IQOS ILUMA.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant has produced evidence for its previous IQOS Trademarks which refer to tobacco and smoke free products.

The Complainant claims that the disputed domain name is confusingly similar to its IQOS Trademarks. According to the Complainant the disputed domain name reproduces the IQOS Trademarks. The sole difference is the geographical term "tw", an abbreviation for Taiwan Province of China. The Complainant states that the addition of such a term does not alter the risk of confusion with the IQOS Trademarks. In addition, the Complainant asserts that the Top-Level Domain ("TLD") (".shop") in the disputed domain name has no effect in the first element, the confusing similarity test.

Furthermore, the Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not affiliated in any way with the Complainant and has not been authorized by the Complainant to use its trademarks or seek registration of any domain names incorporating said trademarks. In addition, the Complainant states that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, since the Respondent's behaviour shows clear intent to obtain an unfair commercial gain by creating the false impression, that the Respondent's website is endorsed by the Complainant.

According to the Complainant the disputed domain name has been registered and used in bad faith. The Respondent had knowledge of the Complainant's IQOS Trademarks, when registering the disputed domain name, since the Respondent immediately started offering the Complainant's IQOS Systems after the

registration. Furthermore, the Complainant states that the term IQOS is a purely imaginative term and not commonly used to refer to tobacco products or electronic devices. In addition, the Complainant asserts, that the Respondent registered and used the disputed domain name with the intention to obtain commercial gain by creating a likelihood of confusion with the Complainant's registered IQOS Trademarks.

Against this background, the Complainant requests that the Panel orders the disputed domain name to be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to the Policy, paragraph 4(a), the Complainant must prove each of the following:

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

The Panel acknowledges the consensus view – as set forth in paragraph 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") – that the Respondent's default to respond to the Complaint does not automatically result in a decision in favor of the Complainant. The Complainant must establish each of the three elements required by the Policy, paragraph 4(a).

Although the Panel may draw appropriate inferences from the Respondent's default (e.g., to regard factual allegations which are not inherently implausible as being true), the Policy, paragraph 4, requires the Complainant to support its assertions with actual evidence in order to succeed in the UDRP proceeding. In view of the Panel, the Complainant has established sufficient evidence in its favor in the case at hand.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the IQOS Trademarks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "tw", may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Furthermore, the addition of the generic Top-Level Domain ("gTLD ") ".shop" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

In line with previous UDRP decisions, it is sufficient for the Complainant to make a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production of evidence to the Respondent (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#); *B-Boy TV Ltd v. bboytv.com c/o Whois Privacy Service / Chief Rocka LTD, formerly named BreakStation LTD.*, WIPO Case No. [D2012-2006](#); *Wal-Mart Stores, Inc. v. WalMart Careers, Inc.*, WIPO Case No. [D2012-0285](#); *Skipton Building Society v. skiptonassetmanagement.com, Private Registration*, WIPO Case No. [D2011-0222](#); *Evolution AB v. tom scholes*, WIPO Case No. [D2023-2030](#); *Canva Pty Ltd v. JOSE VALDIR DE LIMA*, WIPO Case No. [D2023-1736](#); *Streamotion Pty Ltd v. Ovi Khan*, WIPO Case No. [D2022-3784](#)).

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The disputed domain name leads to an online shop. The online shop’s language is Chinese and the prices are in New Taiwan Dollar, therefore the Panel can assume that this shop is designed to target consumers in the Taiwanese market. The online shop sells IQOS systems, although PMI does not sell its products into Taiwan Province of China. Additionally, the online shop offers similar products by third parties. Hence, the Respondent takes unfair commercial benefit on the repute of the IQOS Trademarks for the Respondent’s own gain. Against this background there are neither indications for a bona fide offering nor for a noncommercial or fair use of the disputed domain name (see *Philip Morris Products S.A. v. Shahrooz Sadat, GreenHost*, WIPO Case No. [D2023-2389](#); *Novartis AG v. Wil Smit*, WIPO Case No. [D2016-1155](#)).

The addition of the prefix “tw” (which could be understood to stand for “Taiwan Province of China”) suggests that the website is operated by the owner of the trademark or an authorized distributor (see *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#); *BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#); *Philip Morris Products S.A. v. Han Ming (Lin Cheng) / Chenyi Zhao, 瑪爾有限公司*, WIPO Case No. [D2019-0733](#); *Inter IKEA Systems BV (IISVB) v. Hosein Bagheri*, WIPO Case No. [D2016-0432](#); *LEGO Juris A/S v. Simonovi Eood*, WIPO Case No. [D2012-0863](#)). The Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Further, IQOS is an imaginative term, thus making it highly unlikely that the Respondent is commonly known by the disputed domain name, as the Respondent is required to prove in accordance with section 4(c)(ii) of the Policy.

The Respondent has not filed any Response to the Complainant and, therefore, has not alleged any facts or elements to justify rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

A registration under bad faith occurs, where the Respondent knew or should have known of the registration and use of the trademark prior to registering the disputed domain name. The IQOS Trademarks were registered prior to the registration of the domain name internationally and in Taiwan Province of China.

The Panel finds that the Respondent must have had knowledge of the registration of the IQOS Trademarks prior to the registration of the disputed domain name. The Respondent started selling the IQOS systems not only under the name IQOS but also under the names ILUMA, ILUMA ONE and IQOS ILUMA PRIME which are also trademarked by the Complainant. The Respondent also offers third party products of other commercial origin under the names IQO ILUMA ONE, IQO ILUMA PRIME and IQOS ILUMA. The similarity of the name IQO to the IQOS Trademarks demonstrates the Respondent's knowledge of the IQOS Trademarks. By using the IQOS Trademarks, the affiliated trademarks and similar names the Respondent tried to use the IQOS Trademarks and the Complainant's reputation for the Respondent's own commercial gain. This is only sensible if the Respondent had knowledge of the IQOS Trademarks.

According to paragraph 4(b)(iv) of the Policy, bad faith can be assumed when the Respondent uses the disputed domain name to create a likelihood of confusion with the complainant's trademark as to the source, sponsorship, affiliation or endorsement in order to obtain commercial gain. The Respondent's use of the Complainant's IQOS Trademarks in the disputed domain name and the use of other trademarks of the Complainant creates a likelihood of confusion. This likelihood of confusion is intensified by using the geographical term "tw" which suggests an affiliation with the Complainant. This likelihood is utilized by the Respondent to mislead Internet users to obtain commercial gain.

The Panel finds that the Respondent's use of privacy protection in order to hide his true identity further constitutes the registration and use in bad faith (see *H & M Hennes & Mauritz AB v. Domain Admin, Private Registrations Aktien Gesellschaft / Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2017-0491](#); *Compagnie Générale des Etablissements Michelin v. Balticsea LLC*, WIPO Case No. [D2017-0308](#)).

The Panel finds that the Complainant has established the third element 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 <twiqos.shop> be transferred to the Complainant.

/Alexander Duisberg/

Alexander Duisberg

Sole Panelist

Date: May 22, 2024