

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)  
Case No. D2022-1652

### **1. The Parties**

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

The Respondent is 陈智佳 (chen zhi jia), China.

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

The disputed domain name <iqsell88.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 6, 2022. On May 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 7, 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 May 13, 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 in English on May 16, 2022.

On May 13, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 13, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 21, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on July 7, 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's affiliated company Philip Morris International Inc. is one of the world's leading international tobacco companies, with products sold in approximately 180 countries. The Complainant and its group companies have developed various products to substitute traditional combustible cigarettes, one of which is branded "IQOS". The IQOS-system consists of a controlled heating device into which a designated tobacco product, branded "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 IQ and IQOS (word and device marks) in a large number of jurisdictions around the world, including in China, where the Respondent is located. Examples of such registrations include Chinese trademark registration numbers 36123173, 36123174 and 36123175 for the IQ device mark, all registered on September 28, 2019; European Union trademark registration number 018226787 for the word mark IQ, registered on August 5, 2020; 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 relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is May 22, 2021. The Complainant submits evidence that the disputed domain name redirects Internet users to an active website (itself currently hosted at "www.hnbheat.com"), which is operated as an e-commerce website selling and offering the Complainant's IQOS products and repair and maintenance services for the Complainant's IQOS products, as well as competing third party products of other commercial origin.

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

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

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for IQ and IQOS, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are famous and well regarded among the consumers in the tobacco industry, and provides printouts of its official website and of its marketing materials. Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, operating as an e-commerce website. In this context, the Complainant essentially claims that the Respondent is unlawfully misrepresenting itself as an authorized distributor for the IQOS system and for repair and maintenance services for the Chinese market, using the Complainant's trademarks and product images likely protected by copyright, and offering IQOS products and competing third party products for sale to Internet users by taking unfair advantage of the Complainant's trademarks. The Complainant essentially contends that such use does not confer any rights or legitimate interests in respect of the disputed domain name and constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. 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 Agreement for the disputed domain name 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 his/her comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters and that the website linked to the disputed domain name contains certain words and phrases (including a copyright notice) in English; and, finally, the fact that Chinese as the language of the 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.

### **6.2. Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is 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 name; and
- (c) the disputed domain name has been registered and is 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 marks IQ and IQOS, based on its use and registration of the same as trademarks in a large number of jurisdictions.

Further, as to confusing similarity of the disputed domain name with the Complainant's IQ marks, the Panel finds that the disputed domain name consists of the combination of two elements, namely the Complainant's IQ trademark followed by the suffix "sell88". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7, "in cases where a domain

name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing” (see also *Wal-Mart Stores, Inc. v. Richard McLeod d/b/a For Sale*, WIPO Case No. D2000-0662). The Panel concludes that the disputed domain name contains the entirety of the Complainant’s trademark for IQ, which remains easily recognizable, and is therefore confusingly similar to the Complainant’s IQ marks.

Furthermore, since the disputed domain name and the website hosted at the disputed domain name mainly targets the Complainant’s IQOS mark, the Panel also examines whether the disputed domain name is confusingly similar with the Complainant’s IQOS marks. In this regard, the Panel notes that the disputed domain name contains the entirety of the Complainant’s IQOS trademark, with only the omission of the letter “o”. The Panel therefore accepts the Complainant’s argument that this constitutes an intentional misspelling of the Complainant’s IQOS trademark. The Panel concludes that the Complainant’s IQOS trademark remains recognizable in the disputed domain name, and therefore the disputed domain name is also confusing similar to the Complainant’s IQOS marks. This finding is further supported by the website content at the disputed domain name, where the Complainant’s IQOS trademark is obviously targeted (see in this regard also WIPO Overview 3.0, section 1.7, which states that the broader case context such as website content trading off the complainant’s reputation may also support a finding of confusing similarity).

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks. The Panel decides 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 accepts 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 good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. 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.

Further, reviewing the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to a website which shows a clear intent on the part of the Respondent to obtain unlawful commercial gain from misleading Internet users by using the Complainant’s IQ trademark and a misspelled version of the Complainant’s IQOS trademark in the disputed domain name, with the clear goal to offer unauthorized IQOS-branded products and services as well as competing third party products to such Internet users. Additionally, the Panel has also taken into account the Complainant’s evidence from which it is clear that the Respondent has included no information regarding his/her identity on such website (identifying himself/herself only as an IQOS after-sales maintenance provider), and that it has prominently displayed the Complainant’s IQOS logos and word marks, has used the Complainant’s own product images likely protected by copyright and has also placed a deceptive copyright notice at the bottom of the home page, thereby misleading consumers into believing that the Respondent is licensed by, or otherwise affiliated with the Complainant or its IQ and IQOS trademarks. Moreover, the website does not accurately and prominently disclose the relationship between the Respondent and the Complainant. It is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903) and, given the abovementioned facts, the Respondent’s use does not constitute legitimate noncommercial use or fair use of the disputed domain name.

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 subsequent registration of the disputed domain name clearly and consciously targeted the Complainant's prior registered trademarks for IQ and 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 name. The Panel also considers the disputed domain name to be so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of this disputed domain name 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 name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to an active website used by the Respondent as an e-commerce website selling and offering the Complainant's IQOS system and repair and maintenance services for the Complainant's IQOS system, as well as competing third party products of other commercial origin. Such website also clearly displays the Complainant's well-known trademark IQOS in the website banner at the home page, elsewhere on the home page and throughout the rest of the website, without the authorization of the Complainant. The Respondent also prominently uses the Complainant's official product images (thereby likely violating its copyrights) throughout such website, combined with elements such as a misleading copyright notice "Some Rights Reserved". The Panel concludes from these facts that the Respondent intentionally attracts Internet users for commercial gain to the website associated with the disputed domain name, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks, which is direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. Additionally, the Panel finds that the Respondent's bad faith in its use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale its IQOS products in China, while the website linked to the disputed domain name creates the false and misleading impression that the Complainant has officially introduced its IQOS system to the Chinese market or has authorized the Respondent to provide IQOS repair services. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds 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 name <iqsell88.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: July 21, 2022