

ADMINISTRATIVE PANEL DECISION

**Philip Morris Products S.A. v. Registration Private, Domains By Proxy, LLC /
Marina Triboi**
Case No. D2022-1849

1. The Parties

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

The Respondent is Marina Triboi, United States of America.

2. The Domain Name and Registrar

The disputed domain name <miamiqos.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 May 23, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 24, 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 25, 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 May 26, 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 May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2022.

The Center appointed Chen, 陈长杰 Jacob (Changjie) as the sole panelist in this matter on June 30, 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 a part of the group of companies affiliated with Philip Morris International Inc. ("PMI"). PMI is a major international player in the tobacco industry, with products sold in more than 180 countries.

PMI developed an electrically-heated tobacco smoking system branded IQOS. The IQOS products were first launched in Nagoya, Japan, in 2014. To date, the IQOS products are available in key cities in around 71 markets across the world. The IQOS products are almost exclusively distributed through PMI's official stores and websites as well as authorized distributors retailers. The Complainant claims to have invested USD 9 billion into the science and research of developing smoke-free products and extensive international sales and have achieved considerable international success and reputation, and approximately 19.1 million relevant consumers using the IQOS System worldwide.

The Complainant holds worldwide registrations of the IQOS trademark, including No. 4763088 the United States trademark, registered on June 30, 2015 in classes 9, 11 and 34; No. 4763090 the United States trademark, registered on June 30, 2015 in classes 9, 11 and 34; No. 1329691 international trademark, registered on August 10, 2016 in classes 9,11 and 34, designating numerous jurisdictions; No. 1338099 international trademark, registered on November 22, 2016 in class 35, designating numerous jurisdictions.

According to the information disclosed by the Registrar, the Respondent is Marina Triboi, located in United States of America.

The disputed domain name was registered on March 16, 2022. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website purportedly offering the IQOS products for sale. The disputed domain name currently resolves to a website showing that "MIAMIQOS.COM MOVED TO ANOTHER SITE ASK US THERE VIA EMAIL".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its IQOS trademark. The addition of merely generic, descriptive, or geographical wording is insufficient to differentiate the similarity between the disputed domain name and the Complainant's IQOS trademark.

The Complainant further contends that it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS trademark. Furthermore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and is not making a *bona fide* offering of goods or services. Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name with full knowledge of the Complainant's IQOS trademark. The Respondent's use of the disputed domain name is with the intention to attract, for commercial gain, Internet users to the website 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. Furthermore, the Respondent uses the disputed domain name offering the Complainant's competing products which is a clear-cut trademark infringement. In addition, the Respondent's registration and use of another domain name <iqos-glo.com> in bad faith and the use of privacy protection service to hide its identity also indicate its bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns rights upon numerous registrations of IQOS trademark, which predate the registration date of the disputed domain name (March 16, 2022). The Complainant has successfully established its rights upon IQOS trademark.

It is well established that the generic Top-level Domain (“gTLD”) suffix “.com” as a standard registration requirement is disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s IQOS trademark.

The disputed domain name <miamiqos.com> incorporates the Complainant’s IQOS trademark in its entirety. Previous UDRP decisions have established that if a complainant’s trademark is recognizable within a domain name that is sufficient to establish that the domain name is identical or confusingly similar to the complainant’s trademark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The addition of the wording “miam” before the Complainant’s IQOS trademark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s IQOS trademark. See section 1.8 of the “[WIPO Overview 3.0](#)”.

Thus, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s IQOS trademark.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted evidence of its exclusive rights to the IQOS trademark as well as materials about its IQOS products. The Respondent is not licensed or permitted by the Complainant to use the IQOS trademark or to register a domain name which will be associated with this trademark. Moreover, the Respondent is not an authorized distributor or reseller of the Complainant.

According to the submitted web pages screenshots, the disputed domain name previously resolved to a website allegedly offering the IQOS products for sale in US currency. The Panel notes that the Complainant’s IQOS product images appeared on the website. Further, the website did not accurately or prominently disclose a lack of a commercial relationship between the Complainant and the Respondent. Therefore, the facts do not support a finding of fair use. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Moreover, the nature of the disputed domain name comprising the Complainant’s IQOS trademark and the additional term “miam” (referring to the geographical term “Miami”) with a misspelling, indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests. In addition, except for the Complainant’s IQOS products, other competing product images were also displayed on the website, which the Panel views insufficiently supporting a *bona fide* offering of goods.

The Panel is satisfied that the Complainant has established *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, and the burden of production shifts to the Respondent. See *International Hospitality Management-IHM S.p.A. v. Enrico Callegari Ecostudio*, WIPO Case No. [D2002-0683](#). However, the Respondent has failed to come forward with any evidence giving rise to rights or legitimate interests in the disputed domain name.

The Panel has weighed all available evidence and finds that the Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods or services, nor making fair or noncommercial use of the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(b) of the Policy.

C. Registered and Used in Bad Faith

The Complainant owns worldwide registrations of the IQOS trademark. The disputed domain name was registered subsequent to the first registration of the Complainant's IQOS trademark. An internet search with keyword "IQOS" on search engines reveals a strong and definite link between the IQOS trademark and the Complainant. See section 4.8 of the [WIPO Overview 3.0](#). This evidences the fact that the IQOS trademark would have gained a certain degree of reputation and recognition among relevant consumers worldwide. Thus, the Panel views that the Respondent should have awareness of the Complainant and its IQOS trademark and/or products. Further, the Complainant's IQOS trademark is not a generic term or dictionary word and it is of a certain distinctiveness, thus, it is not persuasive that the Respondent registered the disputed domain name by coincidence. In addition, the disputed domain name previously resolved to a website allegedly offering the Complainant's IQOS products for sale. Therefore, the Panel finds that the Respondent must have had actual knowledge of the Complainant and its IQOS trademark and/or products at the time of registering the disputed domain name.

The website at the disputed domain name purportedly offers not only the Complainant's IQOS products for sale but also the competing products. Thus, the Panel holds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or products and services and has intention to disrupt the business of the Complainant. See *Swarovski Aktiengesellschaft v. WhoisGuard Protected / Peter D. Person*, WIPO Case No. [D2014-1447](#); *Travellers Exchange Corporation Limited v. Travelex Forex Money Changer*, WIPO Case No. [D2011-1364](#).

Moreover, after the commencement of the UDRP proceeding, the Respondent not only failed to respond to the Complainant's contentions, but also shut down the website and notified that it has moved to other site, which further evidences the bad faith of the Respondent.

In addition, based on the Complainant's evidence, the Respondent once had owned another domain name <iqos-glo.com> that has been recognized bad faith in both registration and use in *Philip Morris Products S.A. v. Protected Protected, Shield Whois / Marina Triboi*, WIPO Case No. [D2021-4142](#) due to conducting the activities that were as same as ones on the website at the disputed domain name in this case. The Panel holds that such repeated infringing behaviour of the Respondent is further indicative of bad faith.

Given all the circumstances of the case, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the third element under paragraph 4(c) 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 <miamiqos.com> be transferred to the Complainant.

/Chen, 陈长杰 Jacob (Changjie)/

Chen, 陈长杰 Jacob (Changjie)

Sole Panelist

Date: July 14, 2022