

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Sayedul Azam Chowdhury
Case No. D2022-2230

1. The Parties

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

The Respondent is Sayedul Azam Chowdhury, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <vapeiqos.com> (the “Domain Name”) is registered with Purple IT Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2022. On June 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 22, 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 June 27, 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 June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2022. The Center received an email communication from the Respondent on June 28, 2022. The proceeding was suspended on July 6, 2022. The proceeding was reinstated on July 22, 2022. The Center notified the commencement of Panel appointment process on August 4, 2022.

The Center appointed Ian Lowe as the sole panelist in this matter on August 9, 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. (“PMI”). PMI is an international tobacco company with products sold in around 180 countries. In 2014, PMI launched its IQOS System that comprises a device that heats specially designed tobacco sticks, under the brand name HEETS, sufficiently to generate a flavorful nicotine-containing aerosol without burning the tobacco. The IQOS System is now available in key cities in around 66 markets around the world and approximately 19.1 million consumers worldwide now use the IQOS System.

The IQOS System has been distributed almost exclusively through PMI’s official IQOS stores, websites, and selected authorized distributors and retailers.

The Complainant is the proprietor of a number of registered trademarks in respect of IQOS, including United Arab Emirates trademark number 211139 registered on March 16, 2016.

The Domain Name was registered on March 28, 2022. It resolves to a website headed VAPEIQOS offering for sale a range of vaping products and accessories of third-party competitors of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its IQOS trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply formally to the Complainant’s contentions. It sent an email to the Center on June 28, 2022 stating: “This domai *[sic]* not running yet! We have already asked the domain provider to shut it down. If you have any way to stop, please stop this.”

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the IQOS trademark (the “Mark”), both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark, together with the word “vape”. In the view of the Panel, the addition of this term does not prevent a finding of confusing similarity between the Domain Name and the Mark. Moreover, prior

panels have noted that the addition of terms or letters to a trademark does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent has used the Domain Name not in connection with a *bona fide* offering of goods and services, but for a website (the “Website”) featuring the Mark as part of the VAPEIQOS heading offering for sale competing third party products, and not IQOS products. There is no suggestion that the Respondent has ever been known by the Domain Name (section 2.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the Complainant, save to claim in an informal email that it had asked the Registrar to shut down the Domain Name.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Since the Respondent has used the Domain Name for the Website, prominently featuring the Mark and offering for sale the products of competitors of the Complainant, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. In light of the Respondent’s use of the Domain Name for the Website, the Panel considers that the Respondent has registered and is using the Domain Name with a view to confusing Internet users into believing that the Website was associated with or authorised by the Complainant.

In the Panel’s view, the use of the Domain Name for such activity, taking unfair advantage of the Complainant’s rights in the Mark with a view to commercial gain, amounts to paradigm bad faith registration and use for the purposes of the Policy, paragraph 4(b)(iv).

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

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 Domain Name <vapeiqos.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: August 21, 2022