

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A v. NguyenTrong Tai
Case No. D2022-3685

1. The Parties

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

The Respondent is NguyenTrong Tai, Viet Nam.

2. The Domain Nam and Registrar

The disputed domain name <myiqos247.com> is registered with TLDS L.L.C. d/b/a SRSPPlus (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 4, 2022. On October 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. The Center received an informal communication from a third party on November 18, 2022. On November 23, 2022, the Center requested the third party to identify itself and to clarify any relationship if any with the Respondent, the third party did not reply to the Center's communication. On November 24, 2022, the Center proceeded to panel appointment.

The Center appointed Palazzi, Pablo A. as the sole panelist in this matter on December 1, 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. is a company which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI").

PMI is a leading international tobacco and smoke-free products company with products sold in more than 180 countries. PMI produces and sells a controlled heating, smoke-free device under its IQOS mark into which specially designed tobacco products under the brand name HEETS, amongst others, are inserted and heated to generate a flavorful nicotine-containing aerosol. IQOS products were first launched in 2014 and are available in 71 markets across the world. The Complainant's IQOS and MYIQOS marks have been recognized as being well known by prior UDRP panels.

The Complainant owns a large portfolio of well-known trademarks. Among them, but by no means limited to, are the following trademark registrations for IQOS and MYIQOS:

- International Registration IQOS (word) No. 1218246 registered on July 10, 2014 designating several countries including Viet Nam;
- International Registration MYIQOS (word) No. 1569394 registered on 27, August 2020.

The disputed domain name was registered on June 9, 2022. At the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System and reproducing the Complainant's trademark. In addition, third party accessories affixed with the Complainant's IQOS trademark were also offered for sale.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the MYIQOS trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

With respect to bad faith, the Complainant specifically states that, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System. In addition, third party accessories which infringe the Complainant's IQOS trademark are also offered for sale.

B. Respondent

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

A third party communications was received by the Center on November 18, 2022. The third party stated that "Due to the little information provided, we do not know which of our domains is being complained about, nor which individual or organization is making the complaint against us. Through researching the communications section, we discovered that it seems that the complainant intentionally provided a phone number and email that was not ours (perhaps it was their own phone number and email)."

The Center sent an email to the third party on November 23, 2022 asking to identify itself and clarify any relationship if any with the Respondent. The third party did not reply to the Center's communication.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The Complainant holds several valid trademark registrations for IQOS and MYIQOS.

The disputed domain name contains the trademarks MYIQOS of the Complainant in its entirety with the addition of the number "247". Since the trademark MYIQOS of the Complainant is included in the disputed domain name, this is sufficient to establish that the domain name is confusingly similar to the Complainant's trademark. The addition of other terms does not prevent a finding of confusing similarity under the first element.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

There is no evidence of the existence of any of those rights or legitimate interests in this case.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name.

Moreover, the Complainant has asserted that at the time of filing the complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System. In addition, third party accessories affixed with the Complainant's IQOS trademark are also purportedly offered for sale. It is the view of the Panel, this use of the disputed domain name by the Respondent does not qualify as a *bona fide* offering of products or services.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption. The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

There is no doubt that the Respondent was aware of the Complainant's trademark when it registered the disputed domain name given that the website reproduced of the Complainant's trademark.

With respect to use in bad faith, the Complainant has asserted that at the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System. In addition, third party accessories affixed with the Complainant's IQOS trademark are also offered for sale. It is the view of the Panel, this is evidence of bad faith.

In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and services and products offered on it under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith and has satisfied the third limb of the Policy, under paragraphs 4(a)(iii) and 4(b)(iv).

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 <myiqos247.com> be transferred to the Complainant.

/Pablo Palazzi/

Pablo Palazzi

Sole Panelist

Date: December 19, 2022.