

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Libra Iqos
Case No. D2023-0594

1. The Parties

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

The Respondent is Libra Iqos, Armenia.

2. The Domain Name and Registrar

The disputed domain name <iqoslibra.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 February 9, 2023. On February 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2023 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 February 21, 2023.

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 February 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on April 3, 2023. 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 a leading international tobacco company with products sold in more than 180 countries.

PMI has developed IQOS, which is a controlled heating device into which specially designed tobacco products under the brand names HEETS and HEATSTICKS are inserted and heated to generate flavorful nicotine-containing aerosol. The IQOS products are available in many markets across the world and the IQOS products are almost exclusively distributed through PMI's official stores and websites as well as through authorized distributors and retailers.

The Complainant is the owner of a number of registrations of the IQOS mark, including International Registration No. 1218246 of IQOS (wordmark), registered on July 10, 2014, for goods in International classes 9, 11, and 34 and International Registration No. 1338099 of IQOS (device mark) registered on November 22, 2016, for services in International Class 35.

The disputed domain name was registered on December 14, 2022, and has linked to website in Persian allegedly selling and offering the Complainant's IQOS System.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's IQOS trademark since it consists of the Complainant's trademark in its entirety with the addition of the nondistinctive and descriptive word "libra".

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS trademark or a domain name which will be associated with this trademark. Furthermore, the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Respondent's behavior shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant. The illegitimacy of the Respondent's use of the disputed domain name is further underlined by the fact that the Complainant does not currently offer for sale its IQOS System in the territory of Iran, and the online shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System into the Iranian market.

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

It is thus evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's distinctive IQOS trademark when registering the disputed domain name. It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used it with the intention to attract, for commercial gain, internet users to the website by creating a likelihood of confusion with the Complainant's registered IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which is supported by the Respondent's use of the Complainant's official product images on the website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's trademark IQOS because it contains the trademark in its entirety. The addition of the word "libra" does not alter this assessment since the Complainant's mark is clearly recognizable within the disputed domain name, see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level Domain ("gTLD") ".com" does also not prevent a finding of confusing similarity as it is disregarded under the first element confusing similarity test, see section 1.11 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark neither in the disputed domain name nor on the website.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this, and the way the Respondent has been and is using the disputed domain name (see below in Section C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or

- (ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the extent of use of the Complainant's trademark and the distinctive nature of the mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered or acquired the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name it chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name has been used for a website that purports to offer the Complainant's IQOS System and on which the Respondent uses the Complainant's trademarks IQOS and HEETS just as the Respondent has copied the Complainant's official product images. This clearly gives Internet users the impression that the website is the official website of the Complainant or a website that is authorized by the Complainant, which is not the case.

The Panel therefore finds that the Respondent by its registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website most likely for commercial gain. Moreover, the Panel finds that this use of the disputed domain name disrupts the Complainant's business.

Noting that the disputed domain name incorporates a registered and used trademark, that no response has been filed, that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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 <iqoslibra.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: April 15, 2023