

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Amir Hossein a star  
Case No. D2024-1370

### **1. The Parties**

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

The Respondent is Amir Hossein a star, Hungary.

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

The disputed domain name <1iqos.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 30, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2024, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 9, 2024, 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 April 11, 2024.

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 April 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 15, 2024.

The Center appointed Dennis A. Foster as the sole panelist in this matter on May 30, 2024. 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 Swiss company which is a subsidiary of Philip Morris International, Inc., one of the world's largest tobacco products companies. The Complainant specializes in products that offer alternatives to tobacco cigarettes: "Reduced Risk Products". One of the Complainant's recent products (since around 2014) is the "IQOS System". To date, the IQOS System has been almost exclusively distributed through the Complainant's IQOS stores and web sites and authorized distributors and retailers.

The Complainant owns an IQOS International word trademark registration for countries that include the European Union, India and Türkiye: registration number 1218246, registration date July 10, 2014, in international class 09 for batteries, 11 for electric vaporizers, and 34 for tobacco. The Complainant also owns an IQOS word with device International trademark registration for countries that include the United States of America, registration No.1338099, registration date November 22, 2016, international class 35 for business advertising.

The Complainant has web sites and operates web site stores at: "www.PMI.com", and at "www.myiqos.com".

The Respondent registered the disputed domain name on June 16, 2023. The disputed domain name web site features an online shop selling the Complainant's IQOS System products as well as competing third party products of other commercial origin. This web site is in Farsi and English with a little German, and its business purports to be located in Tehran, Iran.

In connection with the web site of the disputed domain name, the Respondent has copied the Complainant's layout, products, trademarks and promotional materials.

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

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

- The Respondent is not in any way related to the Complainant and is not authorized to use the IQOS trademarks.
- The Complainant's IQOS System products are not at present legally for sale in Iran, but the Respondent's web site nonetheless purports to offer them for sale there.
- The Respondent is using the Complainant's IQOS trademark in the disputed domain name together with the non-distinctive number "1".
- The Respondent even has a Copyright Notice at the bottom of its web site claiming copyright in the material presented on its web site page which it copied from the Complainant.
- A domain name that incorporates a trademark is confusingly similar to that trademark regardless of the other terms in the domain name. The disputed domain name reproduces the IQOS trademark in its entirety in addition to the nondistinctive numeral "1".
- 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. The Complainant has made a prima facie case that the Respondent lacks any rights or legitimate interests in the disputed domain name. On the contrary,

the Respondent's behavior shows a clear intent to obtain unfair commercial gain by misleading consumers to believe the Respondent is affiliated with the Complainant.

- The Respondent's web site is not making a bona fide offering of goods because its goods imitate and compete with the products of the Complainant. The Respondent also offers for sale at the disputed domain name web site third party products that compete with those of the Complainant.

- It is evident from the Respondent's use of the disputed domain name that the Respondent had in mind the Complainant's 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 the disputed domain name in bad faith in violation of the Policy at paragraph 4(b)(iv).

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (i) the domain name registered by the Respondent 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 exhibited copies of its IQOS trademarks whose details are *supra*. The disputed domain name is the same as the Complainant's IQOS trademark but with the addition of the number "1" (one) at the beginning. The Panel finds that the Complainant's IQOS trademark is still plainly recognizable in the disputed domain name, and that therefore the disputed domain name is confusingly similar to the Complainant's trademark.

The general top-level domain, in this case .com, is not taken into consideration in an examination for identity or confusingly similarity. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.11, and section 1.7.

The Panel therefore finds that the Complainant has carried its burden of proof under Policy paragraph 4(a)(i) to show that the disputed domain name is confusingly similar to a trademark in which the Complainant rights.

### **B. Rights or Legitimate Interests**

The Complainant asserts that it has not licensed or otherwise authorized the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS trademark. Thus, the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name ([WIPO Overview 3.0](#), section 2.1).

Further as to whether the Respondent may have legitimate rights and interests in the disputed domain name, the Panel finds that the Complaint has been particularly probative:

Quote:

“The Respondent is not using the disputed domain name for a bona fide offering of goods or services per Policy paragraph 4(c)(i). On the contrary, the Respondent seeks monetary gain by passing itself off as the Complainant. The Respondent is not an authorized distributor or reseller of the IQOS System, and the Respondent also is selling 3<sup>rd</sup> party products that compete with those of the Complainant.

It is a common principle in all cases regarding the *Oki Data* scenario that the use of a domain name cannot be “fair” if it suggests an affiliation with the trademark owner (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The illegitimacy of the Respondent’s use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale its IQOS System products in Iran, yet the on-line shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System products into the Iranian market. Such use of the disputed domain name cannot be considered a bona fide offering of goods and does not establish a legitimate interest on behalf of the Respondent.”

Unquote

See also WIPO 3.0, section 2.13.1; and *Philip Morris Products S.A. v. Registration Private Domains By Proxy, LLC/Troy Mak*, WIPO Case No. [D2018-0602](#).

Furthermore, the Panel notes there is no evidence that the Respondent has been commonly known by the disputed domain name per Policy paragraph 4(c)(ii), nor is there any evidence that Respondent is making a legitimate non-commercial or fair use of the disputed domain name per Policy paragraph 4(c)(iii).

Per the above discussion, the Panel finds the Complainant has shown that the Respondent has no rights or legitimate interests in the disputed domain name per Policy paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

The Panel agrees with the Complainant that it is evident from the Respondent’s use of the disputed domain name that the Respondent knew of the Complainant’s IQOS trademark when registering the disputed domain name. Furthermore, the Respondent began offering the Complainant’s IQOS System for sale on its web site shortly after registering the disputed domain name.

The IQOS trademark is a coined term, and therefore it is unlikely the Respondent could have come up with this term other than by imitating the Complainant’s trademark and web sites.

By reproducing the Complainant’s registered trademark in the disputed domain name and in the information on the web site, without any disclaimer of association (or lack thereof), the Respondent surely is claiming to Internet users at the web site that the Respondent is affiliated with the Complainant, which is false.

As the Complainant contends, the Panel finds that the Respondent’s registration and use of the disputed domain name are in bad faith per Policy paragraph 4(b)(iv): “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, or endorsement of your web site or location or of a product or service on your web site or location.”

Thus, the Panel finds that the Complainant has carried its burden of proof under Policy paragraph 4(a)(iii).

## **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 <1iqos.com> be transferred to the Complainant.

*/Dennis A. Foster/*

**Dennis A. Foster**

Sole Panelist

Date: June 13, 2024