

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Vicente Valdez  
Case No. D2024-4607

### **1. The Parties**

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

The Respondent is Vicente Valdez, Republic of Moldova.

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

The disputed domain name <iqosstickanddevice.com> is registered with Nicenic International Group Co., Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 8, 2024. On November 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 11, 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 November 13, 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 November 14, 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 November 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 11, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on December 18, 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 part of the group of companies affiliated to Philip Morris International Inc. ("PMI"). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

PMI has developed a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names HEETS, HEATSTICKS, DELIA, LEVIA or TEREA, are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the "IQOS System"). The IQOS System was first launched by PMI in Japan in 2014 and is now available in key cities in around 84 markets across the world. To date, the IQOS System has been almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant owns a large portfolio of trademark registrations, including the following registrations, which all cover Republic of Moldova: International Trademark Registration No. 1218246 (registered July 10, 2014) for the word trademark IQOS; and International Trademark Registration No. 1765848 (registered October 18, 2023) for the device trademark.

The disputed domain name was registered on September 13, 2024. The Complainant provided a screenshot taken October 21, 2024, showing the disputed domain name resolved to a website that is an online shop, purporting to offer products from the Complainant's IQOS System, as well as competing third party products of other commercial origin. The website displays the Complainant's IQOS trademark, and offers products labelled with the Complainant's HEETS device trademark, among others. As of the date of this Decision, the disputed domain name does not resolve to an active website.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's registered IQOS trademark on the following grounds. The disputed domain name incorporates the Complainant's IQOS word trademark in its entirety, and only adds the non-distinctive and descriptive words "stick" and "device" and the coordinating conjunction "and". Any Internet user when visiting a website provided under the disputed domain name will reasonably expect to find a website commercially linked to the owner of the IQOS trademark.

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name on the following grounds, among others. 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 to register a domain name which will be associated with this trademark). The Respondent is not making a legitimate noncommercial 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 Respondent is not an authorized distributor or reseller of the IQOS System. The website to which the disputed domain

name resolves does not meet the requirements set out by numerous panel decisions for a bona fide offering of goods. In addition to offering the purported Complainant's products, it is selling competing tobacco products and/or accessories of other commercial origin. It uses the Complainant's official product images and marketing materials without authorization, while at the same time falsely claiming copyright in this material. This illegitimate and false claim of rights in the Complainant's official copyright protected material further supports the false impression that the website is endorsed by the Complainant. The Complainant thus claims that it has made a prima facie case that the Respondent lacks any rights or legitimate interests in the disputed domain name.

The Complainant finally contends that the Respondent has registered and is using the disputed domain name in bad faith on the following grounds, among others. 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. The Respondent started offering the Complainant's IQOS System immediately after registering the disputed domain name. Furthermore, the term "iqos" is purely an imaginative term and unique to the Complainant. The term "iqos" is not commonly used to refer to tobacco products or electronic devices. It is therefore beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name, without the intention of invoking a misleading association with the Complainant. It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to a 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 constitutes registration and use in bad faith.

The Complainant also points out that the website to which the disputed domain name resolves incorporates an unremarkable disclaimer positioned at the bottom of the website with ambiguous and inaccurate information.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions but the Center received an email from an email address connected to the disputed domain name with the following wording:

"Hello sir.  
I owe nothing to him and everything he said is not the truth."

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. It is the owner of numerous trademark registrations for the word trademark IQOS.

The entirety of the Complainant's word trademark IQOS is reproduced within the disputed domain name, followed by the word "stick", the conjunction "and", and the word "device". Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of these terms does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The Panel finds that the Complainant's trademark is recognizable within the disputed domain name. Accordingly, the disputed

domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel considers that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. Also, the evidence establishes that the Respondent has used the disputed domain name to resolve to a website which, by reproducing the Complainant’s trademark and products’ images, purports to be affiliated with the Complainant. Panels have held that the use of a domain name for illegitimate activity, such as implying a commercial affiliation that does not exist, can never confer rights or legitimate interests on a respondent.

While the website at the disputed domain name includes a disclaimer at the bottom with the texts ““IQOS”, “HEETS”, “Marlboro”, and “Heatsticks” are registered trademarks of PMI (Phillip Morris International Inc.) in the United States and/or other countries” and “iqosstickanddevice.com is not endorsed nor affiliated with PMI (Phillip Morris International Inc.)” the Panel find that this is not a clear and prominent disclaimer. In any case, the Respondent does not only offer the Complainant’s trademarked goods for sale, but also those of Complainant’s competitors, which takes the Respondent out of the Oki Data safe harbor.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that (i) the Respondent registered the disputed domain name nearly a decade after the Complainant first registered its IQOS trademark; (ii) the disputed domain name incorporates the Complainant’s trademark in its entirety, and merely adds, with a conjunction “and”, the words “stick” and “device”, which are descriptive of goods in respect of which the Complainant uses its trademark; and (iii) the Respondent has used the disputed domain name to resolve to a website that purportedly offers the Complainant’s products and third-party products. It is clear the Respondent registered the disputed domain name with knowledge of the Complainant’s trademark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The composition of the disputed domain name and the provided evidence show that the Respondent has used the disputed domain name in an intentional attempt to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with the Complainant's trademark. Having reviewed the record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel therefore finds that the Complainant has also established the third element 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 <iqosstickanddevice.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: January 6, 2025