

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 沈家峰 (Jeffrey sen), 汇联无限 (北京) 信息技术有限公司 (hui lian wu xian (bei jing) xin xi ji shu you xian gong si)  
Case No. D2022-3330

### 1. The Parties

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

Respondent is 沈家峰 (Jeffrey sen), 汇联无限 (北京) 信息技术有限公司 (hui lian wu xian (bei jing) xin xi ji shu you xian gong si), China.

### 2. The Domain Names and Registrar

The disputed domain names <hnbbs.com>, <hnbpower.com>, <hnbshow.com>, <hnbvip.com>, and <hnb8.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on September 13, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on September 14, 2022.

On September 13, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 14, 2022, Complainant confirmed its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 12, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on November 2, 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**

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

Complainant, Philip Morris Products S.A., is a company incorporated in Neuchâtel, Switzerland. It is part of a group of companies affiliated with Philip Morris International Inc. ("PMI"). PMI is an international tobacco and smoke-free products company, with products sold in approximately 180 countries.

Complainant has innovated, developed, and sold a number of products, including smoke-free products. One of such products is branded as IQOS, a controlled heating device into which specially designed tobacco products under the trademarks HEETS, HEATSTICKS or TEREA are inserted and heated to generate a flavourful nicotine-containing aerosol.

Complainant has rights in the HNB and HNB related marks. Complainant is the owner of numerous HNB trademarks worldwide, including the International trademark (designating China) registered on December 19, 2014 (the International Trademark registration number 1261439). Complainant is also the owner of numerous IQOS trademarks worldwide, including the Chinese trademark registered on May 14, 2016 (the Chinese Trademark registration number 16314286).

##### **B. Respondents**

Respondent is 沈家峰 (Jeffrey sen), 汇联无限 (北京) 信息技术有限公司 (hui lian wu xian (bei jing) xin xi ji shu you xian gong si), China. The disputed domain names <hnbbs.com>, <hnbshow.com> and <hnbvip.com> were registered on October 24, 2021; <hnb8.com> and <hnbpower.com> were registered on October 5, 2021 and on October 4, 2021, respectively. According to the Complaint and relevant evidence provided by Complainant, the disputed domain names resolve to websites (which have similar webpage layouts) purporting to offer for sale Complainant's products, providing repairing and maintenances services, as well as offering for sale third party products.

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

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

Complainant contends that the disputed domain names are confusingly similar to the HNB trademark. Simply adding the words "bbs", "power", "show", or "vip" or number "8" in tandem with the HNB trademark does not inhibit a finding of confusing similarity.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain names.

Complainant contends that Respondent has registered and used the disputed domain names in bad faith.

Complainant requests that the disputed domain names be transferred to Complainant.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### 6.1. Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- a) The disputed domain names are in Latin script and not in Chinese script indicating that the websites provided under the disputed domain names are directed to, at the very least, an English-speaking public;
- b) This is further supported by the fact that the websites under the disputed domain names also include a number of English words and/or phrases, suggesting that Respondent understands English;
- c) Complainant being a Swiss entity has no knowledge of Chinese and, in the light of above considerations regarding Respondent's knowledge of English, decided to file the Complaint in English being a common language in global business and obviously also a language, in which Respondent is doing business.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that

of the registration agreement.” (WIPO Overview 3.0, section 4.5.1; see also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent, 沈家峰 (Jeffrey sen), 汇联无限 (北京) 信息技术有限公司 (hui lian wu xian (bei jing) xin xi ji shu you xian gong si), appears to be a Chinese resident or entity and is thus presumably not native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain names include Latin characters and particularly English words (“bbs”, “power”, “show”, and “vip”) rather than the Chinese scripts; (b) the generic Top-Level Domain (“gTLD”) of the disputed domain names is “.com”, so the disputed domain names seem to be prepared for users worldwide, including English speaking countries; (c) the disputed domain names resolve to websites all containing content in English; (d) the Center has notified Respondent of the language of the proceeding and commencement of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (e) the Center also informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a response in either English or Chinese but none was filed; and (f) Complainant is a company from Switzerland, and Complainant will be spared the burden of working in Chinese as the language of the proceeding.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## 6.2. Consolidation of Multiple Domain Names

The Panel notes that the present Complaint has been filed against multiple domain names and Complainant has submitted a request for consolidation. On this subject, section 4.11 of the [WIPO Overview 3.0](#) provides *inter alia* as follows:

“The WIPO Center may accept, on a preliminary basis, a consolidated complaint where the criteria described below are *prima facie* met. Any final determination on consolidation would be made by the appointed panel, which may apply its discretion in certain circumstances to order the separation of a filed complaint”.

Paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. The Panel notes that all the disputed domain names were registered by the same Respondent 沈家峰 (Jeffrey sen), 汇联无限 (北京) 信息技术有限公司 (hui lian wu xian (bei jing) xin xi ji shu you xian gong si).

Therefore, Complainant is allowed to proceed with the single Complaint as filed.

## 6.3. Substantive Issues

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

- (i) the disputed domain names registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

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

The Panel finds that Complainant has rights in the HNB marks. The disputed domain names each comprises the HNB mark in its entirety. The disputed domain names only differ from Complainant's trademarks by the suffix "bbs", "power", "show", "vip", and "8" respectively, and the gTLD suffix ".com". This does not compromise the recognizability of Complainant's marks within the disputed domain names, nor eliminate the confusing similarity between Complainant's registered trademarks and the disputed domain names (*Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name". (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: "The applicable Top-Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

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

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

(i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or

(ii) Respondent has been commonly known by the disputed domain names, even if Respondent has acquired no trademark or service mark rights; or

(iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

According to the Complaint, Complainant is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. Complainant has innovated, developed and sold a number of products, including smoke-free products, and one of such products is branded as IQOS. The HNB marks have been registered internationally, including in China since 2014, which precede Respondent's registration of the disputed domain names (in 2021).

Moreover, Respondent, while not affiliated with Complainant, is offering purported Complainant's products, providing repairing and maintenance services, and using IQOS trademark and product images from Complainant's official website. (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia*

*Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Philip Morris Products S.A. v. Lin Cheng, Han Ming*, WIPO Case No. [D2018-2688](#)). In addition, the websites also offer for sale third party products.

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain names:

(a) There has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of legitimate use of the disputed domain names or reasons to justify the choice of the term “hnb” in the disputed domain names and in its business operations. There has been no evidence adduced to show that Complainant has licensed or otherwise permitted Respondent to use the HNB marks or to apply for or use any domain names incorporating the HNB marks, and Respondent has, through the use of confusingly similar disputed domain names and their webpage contents, created a likelihood of confusion with Complainant.

(b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondents registered the disputed domain names in 2021, after the HNB became internationally known. The disputed domain names are confusingly similar to the HNB marks.

(c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. By contrast, the Panel finds that the disputed domain names resolve to websites selling purported Complainant’s products, as well as third party products. It seems that Respondent is making profits through the Internet traffic attracted to the websites under the disputed domain names. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *BASF SE v. Hong Fu Chen, Chen Hong Fu*, WIPO Case No. [D2017-2203](#).)

The Panel notes that Respondent has not produced any evidence to rebut Complainant’s *prima facie* case that Respondent lacks of rights or legitimate interests in the disputed domain names.

Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain names. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances, which, without limitation, shall be evidence of the registration and use of the disputed domain names in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondents’ documented out-of-pocket costs directly related to the disputed domain names; or
- (ii) Respondent has registered the disputed domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain names, Respondent has intentionally attempted to attract, for commercial

gain, Internet users to Respondent's websites or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's websites or locations or of a product or service on the websites or locations.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and are using the disputed domain names in bad faith.

#### **(a) Registration in Bad Faith**

The Panel finds that Complainant has a widespread reputation in the HNB marks with regard to its products and services. Complainant is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. As mentioned above, HNB marks are registered internationally, including international registrations designating China (since 2014). It is not conceivable that Respondent would not have had actual notice of the HNB marks at the time of the registration of the disputed domain names (in 2021) particularly given that Respondent is using the websites resolved by the disputed domain names to sell the purported Complainant's products, and providing repairing and maintenance services.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that all the disputed domain names were registered in bad faith.

#### **(b) Use in Bad Faith**

Respondent is using the websites resolved by the disputed domain names to sell purported Complainant's products, and provide repairing and maintenance services. The websites also offer for sale third party products. Thus, the Panel concludes that Respondent is currently using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites.

Given the reputation of the HNB marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain names have a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the websites to which the disputed domain names resolve. In other words, Respondent has through the use of the confusingly similar disputed domain names created a likelihood of confusion with the HNB marks.

The Panel therefore concludes that the disputed domain names were registered and are being used by Respondents in bad faith. Such uses of the disputed domain names are also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain names, which are confusingly similar to the HNB mark, intended to ride on the goodwill of this trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain names and the conducts of Respondent as far as the websites to which the disputed domain names resolve are indicative of registration and use of the disputed domain names in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## **7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <hnbbbs.com>, <hnbpower.com>, <hnbshow.com>, <hnbvip.com>, and <hnb8.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: November 28, 2022