

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)
Case No. D2022-4665

1. The Parties

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

The Respondent is 陈智佳 (chen zhi jia), China.

2. The Domain Name and Registrar

The disputed domain name <hnbhnb.com> is 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 December 6, 2022. On December 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 7, 2022 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 in English on December 8, 2022.

On December 7, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On December 8, 2022, the Complainant confirmed its request that English be the language of the proceeding. The 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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 16, 2022. In accordance with






the Rules, paragraph 5, the due date for Response was January 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on January 20, 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 a group of companies affiliated with Philip Morris International Inc. ("PMI"). PMI is an international tobacco company with products sold in around 180 countries. PMI has developed a number of tobacco products including a tobacco heating system called IQOS.

The Complainant is the registered proprietor of trade mark registrations for HNB and IQOS including the following:

Trade Mark	Registration Number	Registration Date	Jurisdiction
HNB (word)	1261439	December 19, 2014	International, designating China
IQOS (word)	16314286	May 14, 2016	China
 (device)	16314287	May 14, 2016	China
IQOS (word)	1218246	July 10, 2014	International
 (device)	1338099	November 22, 2016	International
 (device)	1461017	January 18, 2019	International
 (device)	1214416	June 11, 2014	International
 (device)	1329691	August 10, 2016	International, designating China

The evidence filed by the Complainant does not show any use of the HNB trade mark by the Complainant. Substantial use of IQOS is shown.

The Respondent is an individual based in China. The Respondent was the respondent to two other WIPO domain name cases filed by the Complainant:

- (a) *Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)*, WIPO Case No. [D2022-1652](#) relating to the domain name <iqsell88.com>, filed on May 6, 2022 and decided on 21 July 2022.
- (b) *Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)*, WIPO Case No. [D2022-2150](#) relating to the domain name <hnbheat.com>, filed on June 13, 2022 and decided on 28 July 2022.

The latter case was not referred to by the Complainant in its Complaint, however, the Panel considers that it can refer to it because (1) it is a publicly available decision and (2) the Respondent is aware of the decision as it was the respondent to the case. (As to the Panel's power to rely on matters of public record that are not part of the pleadings, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The disputed domain name was registered on July 23, 2022. At the date of this Complaint, the disputed domain name resolved to a website stating it is an after sales service repairer of IQOS products. The website displayed information about the Complainant's IQOS products. There were also advertisements with prices displayed for third party products which can be used with IQOS products.

The website reproduced many official product images of the Complainant. The website included the following notice in Chinese “本站绝不出售、代售任何烟草制品，未成年人禁止购买电子烟及其相关产品。” Translated into English this means “This site absolutely does not sell or sell on behalf others tobacco products, minors are prohibited from buying e-cigarettes and related products.” It is not entirely clear from this if the website was stating it did not sell e-cigarettes or was only referring to not selling tobacco leaf products. In any event, the website also displayed a QR code and stated in Chinese that “if you were interested in purchasing IQOS products, please scan the QR code”.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- (a) The disputed domain name is confusingly similar to its registered trade mark HNB. The disputed domain name wholly incorporates the HNB trade mark which is then repeated once. The generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name does not eliminate the overall notion that the designations are connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant's trade mark HNB. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The website under the disputed domain name gives the impression of being an official website of the Complainant by the use of the IQOS trade mark but does not identify that the Respondent is not related to the Complainant and sells products not produced by the Complainant; and
- (c) The disputed domain name was registered and is being used in bad faith. The Respondent immediately began selling IQOS products once the disputed domain name was registered and must have known of the Complainant. Based on the use of the disputed domain name, the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark. The Complainant also submits that the Respondent was also recently involved in the bad faith registration and use of the domain name <iqsell88.com>.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issues – Language of the Proceeding

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in

the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the language of the Registration Agreement for the disputed domain name is in Chinese. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- a) the disputed domain name is in Latin script and not Chinese script;
- b) the website under the disputed domain name includes a number of English words or phrases;
- c) the Complainant would be prejudiced if it is required to translate the Complaint and supporting documents to Chinese; and
- d) the English language being a common language in global business and a language in which the Respondent is doing business in.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese.
- the Respondent has not commented on the language of the proceeding.
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.
- The Chinese text on the page under the disputed domain name includes reports on releases by Phillip Morris Japan and PMI. It appears from this the Respondent has an understanding of foreign languages, most likely, including English.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- (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 Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark HNB. The first element requires a simple comparison of the registered trade mark on which the Complainant is

based and the disputed domain name. The disputed domain name incorporates the HNB trade mark in full and repeated once, followed by the gTLD “.com”. The gTLD is generally disregarded when considering the first element (see section 1.11 of the [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

“While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

To demonstrate rights or legitimate interests in a domain name, a non-exclusive list of respondent defenses under UDRP paragraph 4(c) of the Policy include the following:

- (i) before any notice of the dispute, the respondent’s 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) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

The Complainant has asserted that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant’s trade marks or to apply for registration of the disputed domain name incorporating the Complainant’s HNB trade mark.

The website under the disputed domain name states that “if you are interested in purchasing IQOS products, please scan the QR code.” in Chinese. Pursuant to paragraph 4(c)(iii) of the Policy, the Panel finds that such use of the disputed domain name does not constitute legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. The use of the registered trade mark HNB in the disputed domain name does appear to be designed to misleadingly divert customers.

This is so even though there is no reference to the HNB trademark on the website under the disputed domain name. Both HNB and IQOS trade marks are owned by the same proprietor. A holder of multiple trade marks has a legitimate interest in preventing the use of one of its registered trade marks to offer products by reference to another of its registered trade marks. The simplest example of this would be where a house mark is used in a domain name but a sub-brand is used on the website under the domain name.

In this case there can be no doubt the Respondent is seeking to divert customers by the use of HNB in the disputed domain name. The Respondent previously used the trade mark HNB as part of the domain name

in *Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)*, WIPO Case No. [D2022-2150](#) relating to the domain name <hnbheat.com> which was clearly intended to misleadingly divert customers.

The Respondent does appear to offer after sales services for products bearing the IQOS trade mark. The website also displays a QR code and stated that “if you are interested in purchasing IQOS products, please scan the QR code.” in Chinese. However, the website displays information about not only the Complainant’s IQOS products but also other third party products. The third party products appear to be for sale.

In this regard the test in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) is applicable. The panel in that case held that to be “*bona fide*” within the meaning paragraph 4(c)(i) of the Policy, the offering should meet the following requirements:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the site to sell only the trade marked goods; otherwise, it could be using the trade mark to bait Internet users and then switch them to other goods;
- The site must accurately disclose the registrant’s relationship with the trade mark owners; it may not, for example, falsely suggest that it is the trade mark owner, or that the website is the official site; and
- The Respondent must not try to corner the market in all domain name, thus depriving the trade mark owner of reflecting its own mark in a domain name.

The use of the disputed domain name does not meet, at least, the second and third requirements set out above. With regard to the second requirement, the website under the disputed domain name offers not only the Complainant’s products but also competing products of third parties. As to the third requirement, the website under the disputed domain name does not accurately disclose its relationship with the Complainant. While the text on the website does not claim that it is an official website of the Complainant, there is some text and also some photographs used on the website that give the impression of some form of affiliation. Various photographs from the website appear to have been taken from the Complainant promotional materials. Further, the website bears a statement “Copyright IQOS (<http://www.hnbhnb.com>). Some Rights Reserved” suggesting some affiliation with the Complainant.

The Panel concludes that the use of HNB in the disputed domain name is, therefore, designed to mislead consumers that the website under the disputed domain name is associated with the Complainant and divert business. The Panel concludes therefore that the Respondent does not have rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The Respondent had actual notice of the Complainant’s HNB trade mark when he registered the disputed domain name. The complaint in *Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)*, WIPO Case No. [D2022-2150](#) had been formally notified to the Respondent by the Center on June 23, 2022, exactly one month before the disputed domain name was registered. The complaint in that case relied, *inter alia*, on the Complainant’s International trade mark registration number 1261439 for HNB.

From the offering of after sales services of the Complainant’s products and the sale of IQOS products through a QR code on the website under the disputed domain name it is clear that the Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. As discussed above, under the section on rights or

legitimate interests, by reproducing the Complainant's HNB trade mark in the disputed domain name, the Respondent is clearly seeking to attract users for commercial gain.

In addition, the Panel notes that the Respondent was the respondent in WIPO Case No. [D2022-2150](#) (<hnbheat.com>) and WIPO Case No. [D2022-1652](#) (<iqsell88.com>). This indicates that the Respondent has been engaged in a pattern of abusive domain name registrations that target the Complainant and its trade marks.

The registration of the disputed domain name was in bad faith and so has been its subsequent use.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 <hnbhnb.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: February 21, 2023