

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) and 刘旺喜 (liu wang xi), 武汉魔梭文化传播有限公司 (wu han mo suo wen hua chuan bo you xian gong si)
Case No. D2022-2860

1. The Parties

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

Respondents are 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, and 刘旺喜 (liu wang xi), 武汉魔梭文化传播有限公司 (wu han mo suo wen hua chuan bo you xian gong si), China.

2. The Domain Names and Registrar

The disputed domain names <hnbfree.com> and <hnbhot.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 4, 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 August 5, 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 August 8, 2022.

On August 5, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant confirmed its request that English be the language of the proceeding on August 8, 2022. Respondents 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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. Respondents did not submit any response. Accordingly, the Center notified Respondents’ default on September 1, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on September 19, 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 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. 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

Respondents are 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, and 刘旺喜 (liu wang xi), 武汉魔梭文化传播有限公司 (wu han mo suo wen hua chuan bo you xian gong si), China. The disputed domain names <hnbfree.com> and <hnbhot.com> were registered on October 24, 2021, and on October 4, 2021, respectively. According to the Complaint and relevant evidence provided by Complainant, the disputed domain names both 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 <hnbfree.com> and <hnbhot.com> are confusingly similar to the HNB trademark. Simply adding the words “free” or “hot” in tandem with the HNB trademark does not inhibit the finding of confusing similarity.

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

Complainant contends that Respondents have registered and used the disputed domain names in bad faith.

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

B. Respondents

Respondents 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 Respondents 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 Respondents understand English.
- c) Complainant being a Swiss entity has no knowledge of Chinese and, in the light of above considerations regarding Respondents' knowledge of English, decided to file the Complaint in English being a common language in global business and obviously also a language, in which Respondents are doing business.
- d) The Registrar appears to also conduct its business in English, which can be seen at its website "<https://wanwang.aliyun.com/>". The website appears to be a multi-language website as one is able to select "English" at the Language plugin located at the top left of the website. This further supports Complainant's contention that Respondents are capable of communicating in English, and that English is a common language in global 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](#)).

The Panel has taken into consideration the facts that Complainant is a company from Switzerland, and Complainant will be spared the burden of working in Chinese as the language of the proceeding. The Panel has also taken into consideration the fact that the disputed domain names <hnbfree.com> and <hnbhot.com> include Latin characters ("hnb") and suffixes in English words ("free" and "hot" respectively), and are registered in the generic Top-Level Domain ("gTLD") space comprising of the Latin characters ".com" (*Compagnie Gervais Danone v. Xiaole Zhang*, WIPO Case No. [D2008-1047](#)).

On the record, Respondents, 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, and 刘旺喜 (liu wang xi), 武汉魔梭文化传播有限公司 (wu han mo suo wen hua chuan bo you xian gong si), China, appear to be Chinese residents and are thus presumably not native English speakers. 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 ("hot", and "free"), rather than the Chinese scripts; (b) the 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 name <hnbfree.com> resolves to a website, which contains English words, such as "IQOS ILUMA will be available in two versions: IQOS ILUMA PRIME and IQOS ILUMA" and "Design Award 2019";¹ and the disputed domain name <hnbhot.com> resolves to a website, which contains English words, such as "IQOS 3.0 Multi", "CLEANER", "POCKET CHARGER", "INSTRUCTIONS" and "copyright © 2022 www.hnbhot.com All rights reserved.";² (d) the Center has notified Respondents of the proceeding in both Chinese and English, and Respondents have indicated no objection to Complainant's request that English be the language of the proceeding; and (e) the Center 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.

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 Respondents

The Panel notes that the present Complaint has been filed against multiple Respondents 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:

¹ See "https://hnbfree.com/"

² See "https://hnbhot.com/"

“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.”

The Panel finds that Complainant has provided sufficient evidence to establish that the disputed domain names or corresponding websites are subject to common control, such as the disputed domain names have been used to host substantially similar website contents including the use of the same images of Complainant’s products (Annex 8 of the Complaint). The connection between the disputed domain names is reinforced by the fact that websites resolved by the disputed domain names contain links related to the same third party websites. For example, both contain the links labelled as “临期食品信息网”, “学校入学报名系统” and “IQOS” (at the end of their webpages). The Panel also notes that the disputed domain names were registered with the same Registrar within a short period of time.

In all of these circumstances, the Panel considers that it is procedurally efficient to allow Complainant to proceed with the single Complaint as filed and is content that such consolidation is fair and equitable to all of the Parties.

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 Respondents are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondents have 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 <hnbfree.com> and <hnbhot.com> comprise the HNB mark in its entirety. The disputed domain names only differ from Complainant’s trademarks by the suffix “free” and “hot” 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 Respondents have rights or legitimate interests in the disputed domain names:

- (i) before any notice to Respondents of the dispute, the use by Respondents 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) Respondents have been commonly known by the disputed domain names, even if Respondents have acquired no trademark or service mark rights; or
- (iii) Respondents are 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 Respondents' registration of the disputed domain names (in 2021).

Moreover, Respondents, while not affiliated with Complainant, are 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 offering for sale third party products.

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

- (a) There has been no evidence adduced to show that Respondents are using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondents have 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 their business operations. There has been no evidence adduced to show that Complainant has licensed or otherwise permitted Respondents to use the HNB marks or to apply for or use any domain names incorporating the HNB marks, and Respondents have, through the use of a 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 Respondents have been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondents have 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 Respondents are 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 Respondents are 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 Respondents have not produced any evidence to rebut Complainant's *prima facie* case that Respondents lack of rights or legitimate interests in the disputed domain names.

Accordingly, Complainant has established that Respondents have 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 Respondents have 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) Respondents have 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 Respondents have engaged in a pattern of such conduct; or
- (iii) Respondents have registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain names, Respondents have intentionally attempted to attract, for commercial gain, Internet users to Respondents' websites or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondents' 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 Respondents have 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 and IQOS 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 Respondents 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 Respondents are using the websites resolved by the disputed domain names to sell the purported Complainant's products.

Moreover, Respondents have 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 the disputed domain names were registered in bad faith.

(b) Use in Bad Faith

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

Given the reputation of the HNB and IQOS 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, Respondents have 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, Respondents, 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 Respondents, the choice of the disputed domain names and the conducts of Respondents as far as the websites to which the disputed domain names resolve are indicative of registrations and uses 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 <hnbfree.com> and <hnbhot.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: November 8, 2022