

## **ADMINISTRATIVE PANEL DECISION**

**KT & G Corporation, and Philip Morris Products S.A. v. Ieva Kalnina**  
**Case No. D2024-0555**

### **1. The Parties**

The Complainants are KT & G Corporation, Republic of Korea, and Philip Morris Products S.A., Switzerland, represented by D.M. Kisch Inc., South Africa.

The Respondent is Ieva Kalnina, Latvia, represented by Arsy Law, Latvia.

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

The disputed domain name <lilsolid.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2024. On February 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on February 9, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on February 14, 2024.

The Respondent sent an informal email to the Center on February 12, 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 February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was originally March 7, 2024, and was extended to March 11, 2024, upon the Respondent’s request received on March 6, 2024, in accordance with paragraph 5(b) of the Rules.

The Response was filed with the Center on March 11, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on March 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. Consolidation of Complaints**

In view of the factual circumstances set out below, the Panel is satisfied that both the Complainants are proper Complainants in the proceeding, on the grounds that (i) the Complainants have a specific common grievance against the Respondent, or the Respondent has engaged in common conduct that has affected the Complainants in a similar fashion, and (ii) that it would be equitable and procedurally efficient to permit the consolidation (see section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

#### **5. Factual Background**

The Complainant KT & G Corporation (“KT & G”) is a company established under the laws of the Republic of Korea. It is manufacturer of tobacco and nicotine products under various brand names and trademarks, including the trademark LIL SOLID.

KT & G is the owner of trademark registrations including the following:

- International trademark registration number 1469782 for the word mark LIL SOLID, registered on February 26, 2019 in International Classes 9, 11, and 34; and
- International trademark registration number 1466305 for a figurative mark, registered on April 10, 2019, in International Classes 9, 11, and 34 (the “Figurative Mark”). The Figurative Mark comprises the term “lil” (i.e., with a lower case “i”) followed by the term “SOLID” in a smaller font but in uppercase.

The Complainant Philip Morris Products S.A. (“Phillip Morris”) is a company established under the laws of Switzerland. It is a supplier of tobacco and smoke-free products under registered trademarks including IQOS and ILUMA.

The Complainants submit (and it is not disputed) that, under a global collaboration agreement, Philip Morris is licensed to sell KT & G’s LIL SOLID products within its IQOS range.

The disputed domain name was registered on December 14, 2022.

The Complainants provide evidence that, on January 9, 2024, the disputed domain name resolved to a website at “www.lilsolid.com”. The website included the following characteristics:

1. It was headed “IQOS, LIL SOLID & ILUMA: Buy Online > Worldwide Delivery” and included a prominent LIL SOLID logo, in which both letters “i” appear in lower case.
2. It included an extensive offering of Philip Morris’s IQOS and ILUMA products for sale online.
3. It included a large number of images of IQOS- and ILUMA-branded products, which the Complainants submit are Philip Morris’s proprietary and copyright products images.
4. It contained footers with the headings “COLLECTIONS”, “IMPORTANT INFORMATION”, “TERMS AND POLICIES” and “IMPORTANT WARNING”. The first of these included a list of IQOS, ILUMA and LIL SOLID

products. None of the headings included any indication that the operator of the website was unaffiliated with the owner of any of the LIL SOLID, IQOS or ILUMA trademarks.

5. The footers stated “© 2024 Lil Solid”.

6. The footers contained other links, the last of which was “Legal notice”. This link resolved to a webpage stating:

“LEGAL NOTICE

All product and company names are trademarks or registered trademarks of their respective holders. Use of them does not imply any affiliation with or endorsement by them. ‘IQOS’ is a registered trademark of PMI (Phillip Morris International Inc.). This site is not endorsed nor affiliated with PMI.

Please be advised that certain marketing materials and text featured on this website are sourced from the official IQOS website for the purpose of promoting and reselling their products. All such materials and text are used in accordance with fair use principles and for informational purposes only. This website is neither endorsed nor officially affiliated with PMI (Phillip Morris International Inc.) or the official IQOS website.”

## **6. Parties’ Contentions**

### **A. Complainant**

The Complainants contends that the disputed domain name is identical to the LIL SOLID trademark, in that it identically adopts that trademark.

The Complainants submit that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that they have never authorized the Respondent to use the LIL SOLID, IQOS or ILUMA trademarks and that the Respondent is not an authorized reseller of the IQOS system.

The Complainants contend that the Respondent is using the disputed domain name to mislead Internet users into believing that its website and business are legitimately affiliated with the Complainants’ trademarks. They submit that the Respondent cannot meet the criteria for the legitimate use by a reseller of a manufacturer’s trademark, because the disputed domain name in itself suggests an affiliation with the LIL SOLID trademark, by reproducing that trademark exactly. Furthermore, they contend that the Respondent’s website makes use of a logo similar to the Figurative Mark and reproduces the LIL SOLID, IQOS and ILUMA trademarks in addition to Philip Morris’s official product images.

The Complainants further submit that the Respondent’s website does not accurately and prominently disclose the relationship (or lack thereof) between the website operator and the relevant website owner (see *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and section 2.8.1 of [WIPO Overview 3.0](#)). They contend that while the website contains numerous indications of such an affiliation, the “Legal notice” accessible by a link from webpage footer is not presented in a clear or sufficiently prominent manner.

The Complainants submit that the disputed domain name was registered and has been used in bad faith. They contend that the Respondent was obviously aware of the LIL SOLID trademark when it registered the disputed domain name, since that is an invented name and has been used by the Respondent to sell tobacco products and electronic devices.

The Complainants contend that the Respondent has registered and used the disputed domain name with the intention of attracting, for commercial gain, Internet users to its website by creating a likelihood of confusion with the LIL SOLID trademark as to the source, sponsorship, affiliation or endorsement of its website or of products on that website (paragraph 4(b)(iv) of the Policy).

The Complainants request the transfer of the disputed domain name.

## **B. Respondent**

The Respondent contends that, while it inadvertently included certain of the Complainants' "trademarked" elements on its website, it removed all such elements on legal advice and has operated in good faith throughout in accordance with applicable Latvian laws.

The Respondent concedes that the disputed domain name "looks similar" to the LIL SOLID trademark. However, the Respondent contends that it has made nominative fair use of that trademark in the manner contemplated by the *Oki Data* criteria (see below).

The Respondent submits that it has rights or legitimate interests in respect of the disputed domain name because it has at all times proceeded in accordance with Latvian commercial laws. The Respondent contends that the Complainants' products may lawfully be sold by anyone, and that its website therefore has a legitimate purpose.

The Respondent exhibits evidence that the Complainants' products which it has resold on its website were acquired from authorized suppliers. It asserts that the Complainants ultimately obtain profits from these sales.

The Respondent submits that the operation of its website has complied with the *Oki Data* criteria, namely, it has actually offered the goods at issue; it has used the site to sell only the trademarked goods; the site has accurately disclosed its relationship with the trademark owner; and the Respondent has not tried to corner the market in relevant domain names.

Concerning the "Legal notice" disclaimer contained on the website, the Respondent states that this was "meticulously crafted to adhere to legal standards and ensure transparency in our operations," and that it unequivocally states that the website is not affiliated with the relevant trademark owners, including Phillip Morris.

The Respondent denies that it has acted in bad faith and states that the Complainants' allegations of deceptive practices are unfounded. It submits that it inadvertently included "trademarked" material on its website only to ensure accurate representation of the Complainants' products, and made all necessary changes when advised to do so, including the removal of the LIL SOLID logo and relevant trademarks, revision of the main banner, the replacement of images and the rewriting of relevant text by AI (Artificial Intelligence).

The Respondent contends that it has operated at all times in good faith, has disclosed its identity and relationship with the Complainants, and has not sought to engage in impersonation or cybersquatting. It states that its operations are conducted within the legal framework of Latvia and that any oversight or enforcement issues fall within the jurisdiction of the Latvian authorities.

## **7. Discussion and Findings**

In order to succeed in the Complaint, the Complainants are required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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 is satisfied that the Complainants have demonstrated registered trademark rights in respect of the mark LIL SOLID. The disputed domain name directly reproduces that trademark, without amendment or adornment, and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainants have rights.

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

The Respondent contends that it has used the disputed domain name to make nominative fair use of the Complainants' LIL SOLID trademark for the purpose of resale of the Complainants' genuine goods. It submits that its activities are legitimate under Latvian law (or can only be challenged by the Latvian authorities) and that it therefore has rights or legitimate interests in respect of the disputed domain name.

The Panel observes that the UDRP is an independent dispute resolution mechanism, to which the registrant of a ".com" domain name (and others) submits by way of a contractual obligation upon registration of that domain name. Cases which fall to be determined under the UDRP are decided strictly under the terms of the Policy (as informed by jurisprudence under the UDRP including those matters summarized in [WIPO Overview 3.0](#)) and not by reference to the national laws of any particular country (although the operation of the UDRP does not supplant any national laws, nor prevent the parties from having separate recourse to the courts of that country).

In the circumstances, the Respondent's contention that its activities are lawful under Latvian domestic law (upon which the Panel cannot and does not express any view) is not a relevant consideration in determining the present Complaint.

The Panel observes that the disputed domain name is identical to the Complainants' LIL SOLID trademark, which the Panel finds to comprise an invented term that has no meaning in commerce other than to denote the Complainants' relevant product. In these circumstances, the disputed domain name carries a "high risk of implied affiliation" with the Complainants' trademark (section 2.5.1 of [WIPO Overview 3.0](#)) and the Panel finds it to be inherently misleading in the circumstances.

Furthermore, the Panel does not find the *Oki Data* criteria to be satisfied in this case. Those criteria, if fulfilled, may enable a respondent such as a reseller or independent service provider to demonstrate rights or legitimate interests in respect a domain name which incorporates a trademark owners' mark. However, this is a high - if not insurmountable - hurdle in a case where the disputed domain name itself is inherently misleading. In this case the Panel finds the Respondent's "Legal notice" to fall very far short of the requirement for an accurate and sufficiently prominent disclaimer which makes clear the relationship (or lack thereof) between the website operator and the trademark owner. The disclaimer is accessible only by a link from an inconspicuous item, "Legal notice", included towards the end of the website footer, which fails in any significant respect to command the attention of the website visitor. The Respondent's website content itself is (or was prior to the Respondent's changes) moreover highly suggestive of an affiliation between the website and the Complainants, including the prominent use of the Complainant's trademarks and official product images, and the Panel finds the "Legal notice" to be in no way effective to offset the misleading impression created by this website content and the choice of the disputed domain name itself. In this case, insofar as the identical disputed domain name communicates a message of affiliation, it does so in a misleading manner.

The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Based on the Respondent's use of the disputed domain name, it is obvious that the Respondent registered the disputed domain name in the knowledge of the Complainants' LIL SOLID trademark and with the

intention of referencing that trademark for the resale of the Complainants' products. However, both in registering the disputed domain name and in operating its website for that purpose, the Respondent has failed to make clear that it has no commercial affiliation with, and is not authorized by, the Complainants and falsely implies instead that some such affiliation or authorization exists. This amounts to the Respondent taking unfair commercial advantage of the Complainants' LIL SOLID trademark, and bad faith for the purposes of the Policy.

The Panel finds in particular that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants' trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Respondent's subsequent change of certain content on the website, including removal of the trademarked elements, after the commencement of the proceeding does not affect the Panel's finding of bad faith since as of the time of the filing of the Complaint, the website was used in a way that was highly suggestive of an affiliation between the website and the Complainants. Moreover, as previously noted, the Panel finds the disputed domain name itself to be inherently misleading.

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

## **8. 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 <lilsolid.com> be transferred to the Complainants.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: April 1, 2024