

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Kirill Kirill

Case No. D2022-2156

1. The Parties

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

The Respondent is Kirill Kirill, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <iqs24h.com> (the “Domain Name”) is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2022. On June 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 14, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2022.

The Center appointed Ian Lowe as the sole panelist in this matter on August 4, 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

The Complainant is part of the group of companies affiliated to Philip Morris International, Inc. (“PMI”). PMI is an international tobacco company with products sold in around 180 countries. In 2014, PMI launched its IQOS System that comprises a device that heats specially designed tobacco sticks, under the brand name HEETS, sufficiently to generate a flavorful nicotine-containing aerosol without burning the tobacco. The IQOS System is now available in key cities in around 66 markets around the world and approximately 19.1 million consumers worldwide now use the IQOS System.

The IQOS System has been distributed almost exclusively through PMI’s official IQOS stores, websites, and selected authorized distributors and retailers.

The Complainant is the proprietor of a number of registered trademarks in respect of IQ, IQOS and HEETS, including European Union trademark number 018226787 IQ registered on August 5, 2020; International trademark number 1329691 stylised word mark IQOS registered on August 10, 2016, designating a number of territories including the Russian Federation; and International trademark number 1326410 HEETS registered on July 19, 2016, designating a number of territories including the Russian Federation.

The Domain Name was registered on August 18, 2021. It resolves to a website offering for sale a range of HEETS and IQOS products priced in US Dollars. It also offers for sale a range of third-party products of competitors of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its IQ trademark (the “Mark”), that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

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

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark, together with the characters “s” and “24h”. In the view of the Panel, the addition of these terms, pluralising “iq” and adding the abbreviation for “24 hours” does not prevent a finding of confusing similarity between the

Domain Name and the Mark. Moreover, prior panels have noted that the addition of terms or letters to a trademark does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent has used the Domain Name for a website (the “Website”) featuring the Mark and purporting to offer IQOS and HEETS products without the authority of the Complainant. Furthermore, the Website features unauthorized copies of images of the Complainant’s products. The Respondent is not an authorized sales agent of the Complainant. The Website also offers competing third party products. The prices on the Website are quoted in US Dollars, indicating that the Website is directed at the United States of America, yet HEETS products are not authorized by the United States Food and Drugs Administration (the “FDA”) for sale in the United States of America.

In the Panel’s view, the use of the Complainant’s marks and images falsely represents to Internet users that the Respondent is authorized by the Complainant to sell the products.

Although there has been no Response by the Respondent, the Panel has in mind that previous UDRP panels have recognized that resellers using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. The *Oki Data*¹ test as set out in section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) outlines the following cumulative requirements for such a finding:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site only to sell the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The Website offers what purport to be the Complainant’s goods but is also offering for sale the related products of third parties. The second requirement is not therefore met. Turning to the third requirement, the Website gives no information whatsoever as to the identity of the operator of the Website or seller of the products on offer and fails to make clear in an accurate and prominent way, or at all, the Respondent’s relationship (or absence of relationship) with the Complainant. The third requirement is not therefore met.

Accordingly, the Panel does not consider that the Respondent has met the *Oki Data* test, and finds that there is a *prima facie* case that the Respondent does not have any rights or legitimate interests in respect of the Domain Name. Notwithstanding the content found at the Domain Name, the construction of the Domain Name itself is such to carry a risk of implied affiliation and thus cannot constitute fair use.

The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the evidence available to the Panel. In the circumstances, the Panel finds that the Complainant has established that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

¹ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)

C. Registered and Used in Bad Faith

Since the Respondent has used the Domain Name for a website prominently featuring the Mark and other trademarks of the Complainant, and has operated an online shop purporting to offer the Complainant's products for sale, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. In light of the Respondent's use of the Mark and copies of the Complainant's images of its products, the Panel considers that the Respondent has registered and used the Domain Name with a view to confusing Internet users into believing that the Website was associated with or authorised by the Complainant.

As previously noted the Website offers what purport to be the Complainant's goods but is also offering for sale the related products of third parties. In the Panel's view, the use of the Domain Name for such activity, taking unfair advantage of the Complainant's rights in the Mark, clearly with a view to commercial gain, amounts to paradigm bad faith registration and use for the purposes of the Policy, paragraph 4(b)(iv).

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

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 Domain Name <iqs24h.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: August 21, 2022