

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si)

Case No. D2022-4029

1. The Parties

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

The Respondent is 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <iqhnb.com> is registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 November 3, 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 on November 3, 2022.

On November 3, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, 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 of the Complaint, and the proceedings commenced on November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2022.


The Center appointed Rachel Tan as the sole panelist in this matter on December 14, 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 with Philip Morris International Inc. ("PMI"). PMI is an international tobacco company with products sold in approximately 180 countries. PMI developed a tobacco heating system called IQOS. It is a controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (the "IQOS System"). The IQOS System was first launched in Japan in 2014 and is available in around 71 markets across the world.

The Complainant is the owner of trade marks incorporating the IQ, HNB, IQOS and  marks in multiple jurisdictions, including European Union Registration No. 18226787 for IQ registered on August 5, 2020 in classes 9 and 34; United Kingdom Registration No. UK00918226787 for IQ registered on August 5, 2020 in classes 9 and 34; International Registration No. 1261439 for HNB registered on December 19, 2014, designating, *inter alia*, China, in classes 9, 11 and 34; International Registration No. 1329691 for IQOS registered on August 10, 2016, designating, *inter alia*, China, in classes 9, 11 and 34; and International Registration No. 1331054 for  registered on October 11, 2016 designating, *inter alia*, China, in classes 9 and 34.

The Respondent is 赵波 (ZhaoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), China.

The disputed domain name was registered on November 4, 2021. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website in Chinese which allegedly offered the IQOS System and competing third party products of other commercial origin for sale. The website prominently displayed the Complainant's IQOS and  marks together with images of the Complainant's products. However, at the time of this decision, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of the IQ and HNB mark in numerous jurisdictions. The disputed domain name identically adopts the Complainant's IQ and HNB marks. The applicable Top-Level Domain ("TLD") in the disputed domain name is viewed as a standard registration requirement and should be disregarded under the first element confusing similarity test. Any Internet user when visiting the resolved website under the disputed domain name will reasonably expect to find a website commercially linked to the owner of the IQ and HNB marks.

The Complainant further alleges that it has made a *prima facie* case that the Respondent lacks any right or legitimate interest in the disputed domain name. The Respondent is not licensed or otherwise permitted to use any of the Complainant's marks or to register a domain name incorporating the IQ and HNB marks. The Respondent is not an authorized distributor or reseller of the IQOS System, and the website includes no information regarding the identity of the provider of the website. The website is also selling competing

tobacco products and/or accessories of other commercial origin as well as infringing third party items of other commercial origin. Further, the website prominently presents the Complainant's marks, official products images, marketing materials and official videos without authorization. Therefore, the Respondent's use of the disputed domain name does not meet the requirements for a *bona fide* offering of goods.

The Complainant finally asserts that Respondent knew of the Complainant's IQ and HNB marks when registering the disputed domain name. The Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered IQ and HNB marks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. Apart from the IQOS System, the Respondent is using the Complainant's IQ and HNB marks for the purpose of offering for sale of the third-party products of other commercial origin. Such abusive use constitutes clear evidence of the Respondent's bad faith. Further, the Respondent's purported recent involvement in the bad faith registration and use of the domain names <iqsod.com> and <iqsscn.com> shows a pattern of bad faith conduct. The fact that the Respondent is using a privacy protection service to hide its true identity may in itself constitute a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

(a) the disputed domain name is in Latin script, which indicates that the website provided under the disputed domain name is directed to, at the very least, an English-speaking public;

(b) the fact that the website under the disputed domain name also includes a number of English words, suggesting the Respondent understands English;

(c) the Complainant being a Swiss entity has no knowledge of Chinese and the Respondent is capable of communicating in English; and

(d) English is a common language in global business.

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 order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

(a) the Complainant is a company based in Switzerland. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;

(b) English is not the native language of either Party;

(c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;

(d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese, and has been notified of its default; and

(e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the IQ and HNB marks.

The Panel notes that the IQ and HNB marks are wholly encompassed within the disputed domain name. The positioning of the IQ and HNB marks makes them instantly recognizable as the most distinctive elements of the disputed domain name. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

It is permissible for the Panel to ignore the generic TLD, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#). Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.


Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the IQ and HNB marks, whereas the Respondent seems to have no trade mark rights, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the terms "iq" and "hnb". There is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's IQ and HNB marks or register the disputed domain name.

The Panel notes that the disputed domain name previously resolved to a website in Chinese which allegedly offered the IQOS System as well as third party products of other commercial origin for sale. The website


displayed the Complainant's IQOS and  marks together with images of the Complainant's products. The website did not accurately or prominently disclose a lack of a commercial relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of fair use under the "Oki Data test". See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Moreover, the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's IQ and HNB marks were registered before the registration of the disputed domain name. Through use and advertising, the Complainant's IQ and HNB marks are known throughout the world. Search results using the terms "iq" and "hnb" on the Internet direct users to the Complainant and its products, which indicates that an exclusive connection between the IQ and HNB marks and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's IQ and HNB marks when registering the disputed domain name, see section 3.2.2 of the [WIPO Overview 3.0](#).

The Panel notes that the disputed domain name previously resolved to a website allegedly offering the IQOS System as well as third party products of other commercial origin for sale. The website displayed the Complainant's IQOS and  marks together with images of the Complainant's products. The Panel is of the view that the Respondent intentionally created a likelihood of confusion with the Complainant's IQ and HNB marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

In addition, the Panel finds that the current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considered the degree of distinctiveness and reputation of the Complainant's IQ and HNB marks, as well as the Respondent's failure to respond in the face of the Complainant's allegations of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has 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 <iqhnb.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: December 28, 2022