

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Israfil Alam
Case No. D2022-4517

1. The Parties

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

The Respondent is Israfil Alam, China.

2. The Domain Name and Registrar

The disputed domain name <ilumaiqos.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2022. On November 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 December 1, 2022.

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 December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 30, 2022.

The Center appointed Gonçalo M. C. Da Cunha Ferreira as the sole panelist in this matter on January 6, 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 a company which is part of the group of companies affiliated to Philip Morris International Inc.

The Complainant is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”). The Complainant has developed a number of RRP. One of these RRP developed and sold by the Complainant is a tobacco heating system called IQOS.

There are 5 versions of the IQOS heating device currently available: the IQOS 2.4/IQOS 2.4+ pocket charger and holder, IQOS 3 pocket charger and holder, IQOS 3 Multi device, IQOS 3 DUO/DUOS and IQOS ILUMA.

Today the IQOS system is available in key cities in around 71 markets across the world. As a result of an investment of over USD 9 billion into the science and research of developing smoke-free products and extensive international sales (in accordance with local laws), the IQOS system has achieved considerable international success and reputation, and approximately 19.1 million relevant consumers using the IQOS system worldwide.

To date, the IQOS system has been almost exclusively distributed through the Complainant official IQOS stores and websites and selected authorized distributors and retailers.

For its smoke-free products the Complainant owns a large portfolio of trademarks, including the following trademark registrations:

- United Arab Emirates (“UAE”) Registration IQOS (word) No. 211139 registered on March 16, 2016;
- UAE Registration IQOS ILUMA (word) No. 322505 registered on March 28, 2020;
- UAE Registration ILUMA (word) No. 322507 registered on March 28, 2020.

The disputed domain name was registered on October 6, 2022.

The disputed domain name was linked to an online shop at “www.ilumaiqos.com” (referred to as the “Website”) selling and offering the Complainant’s IQOS system, as well as competing third-party products of other commercial origins.

The Website was provided in English but the indication of all prices is in United Arab Emirates dirham (ا. د) currency, as well as presenting the address of “[...], Dubai, UAE”.

Currently, the disputed domain name resolves to an inactive site.

5. Parties' Contentions

A. Complainant

The Complainant claims that:

- a) the disputed domain name is confusingly similar to its own trademark registrations ILUMA, IQOS, and IQOS ILUMA.
- b) the disputed domain name identically adopts the Complainant's ILUMA and IQOS trademarks and/or a mark highly similar / phonetically almost identical to the IQOS ILUMA trademarks.
- c) it has made a *prima facie* case that the Respondent lacks any right or legitimate interest in the disputed domain name.
- d) it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its ILUMA and IQOS trademarks and/or a mark highly similar /phonetically almost identical to the IQOS ILUMA trademark (or a domain name which will be associated with these trademarks).
- e) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name
- f) the Respondent's behaviour shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or tarnishing the trademarks owned by the Complainant.

B. Respondent

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

6. Discussion and Findings

6.2. Substantive Matters

Paragraph 15(a) of the Rules instructs the Panel to decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service 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.

Paragraph 4(b) of the Policy sets out four non-exhaustive illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three non-exhaustive illustrative circumstances any one of which, if prove by the Respondent, shall be evidence of the Respondent's rights to or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Identical or Confusingly Similar

The disputed domain name incorporates the Complainant's trademarks ILUMA and IQOS, as well as the trademark IQOS ILUMA simply changing the order of the terms.

As the trademarks are clearly recognizable within the disputed domain name, the Panel makes a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its ILUMA, IQOS, and IQOS ILUMA trademarks.

The Complainant also has made a *prima facie* case that the Respondent lacks any right or legitimate interest in the disputed domain name.

As highlighted in several previous UDRP decisions, in such a case the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1). The Respondent did not submit a response and has failed to invoke any circumstance which could have demonstrated rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel accepts and agrees with the Complainant that the disputed domain name was registered and has been used in bad faith, since it has been linked to an online shop that offers for sale the Complainant's IQOS products, as well as competing third-party products of other commercial origins.

Moreover, the Website was further using a number of the Complainant's official product images without the Complainant's authorization, while at the same time providing a copyright notice at the bottom of the Website claiming copyright in the material presented on the Website and thereby strengthening the false impression of affiliation with the Complainant.

Despite the fact that at the moment the disputed domain name does not resolve to an active website the passive holding of the disputed domain name does not prevent a finding of bad faith (see [WIPO Overview 3.0](#), section 3.3).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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, <ilumaiqos.com> be transferred to the Complainant.

/Gonçalo M. C. Da Cunha Ferreira/

Gonçalo M. C. Da Cunha Ferreira

Sole Panelist

Date: January 20, 2023