

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 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)

Case No. D2023-0689

1. The Parties

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

The Respondent is 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.

2. The Domain Name and Registrar

The disputed domain name <hnbjiafeng.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (Private Registration / No Details) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2023, 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 in English on February 21, 2023.

On February 17, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 21, 2023, 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 in English and Chinese of the Complaint, and the proceedings commenced on February 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 16, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on March 29, 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's affiliated company Philip Morris International Inc. is one of the world's leading international tobacco companies, with products sold in over 180 countries. The Complainant and its group companies offer both traditional combustible cigarettes and a line of so-called "heat-not-burn products" (also abbreviated as "HNB", which is related to one of the Complainant's registered trademarks adduced in this proceeding), one type of the Complainant's products is branded "IQOS". The IQOS system consists of a controlled heating device into which a designated tobacco product, branded "Heets", "HeatSticks", or "Terea", is inserted and heated to generate a nicotine-containing aerosol. The Complainant states that the IQOS system has achieved considerable international success and fame, and that it currently has an estimated amount of 19.1 million regular users worldwide.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for HNB and IQOS, including International trademark registration number 1261439 for the word mark HNB, registered on December 19, 2014, designating, *inter alia*, Australia and China; Chinese trademark registration number 16314286 for the word mark IQOS, registered on May 14, 2016; and International trademark registration number 1329691 for the figurative mark IQOS, registered on August 10, 2016, and designating, *inter alia*, the European Union and China.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is October 24, 2021. The Complainant submits evidence that the disputed domain name directs to an active website, which is operated as an e-commerce website purportedly offering the Complainant's IQOS-branded products for sale, as well as competing third party products of other commercial origin and third party accessories displaying the IQOS marks.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for HNB, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its products and trademarks are famous and well known among the consumers in the tobacco industry, and provides printouts of its official website and of its marketing materials. Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, operating as an e-commerce website. In this context, the Complainant claims that the Respondent is unlawfully using the Complainant's trademarks and product images likely protected by copyright, and offering unauthorized IQOS-branded products and competing third party products for sale to Internet users by taking unfair advantage of the Complainant's trademarks. The Complainant also contends that the Respondent has already been engaged in a very similar prior UDRP proceeding where the panel recognized the Complainant's rights in its HNB trademarks and held that the Respondent had registered and used the

domain names in bad faith (see *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*), WIPO Case No. [D2022-3330](#)). The Complainant essentially contends that such use does not confer any rights or legitimate interests in respect of the disputed domain name and constitutes bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and in English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters, that the website linked to the disputed domain name contains some words and expressions in English; and, finally, the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in the mark HNB, based on its registration of the same as a trademark.

Further, as to confusing similarity of the disputed domain name with the Complainant's marks, the Panel finds that the disputed domain name consists of the combination of two elements, namely the Complainant's HNB trademark followed by the term "jiafeng". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, "in cases where a domain name incorporates the entirety of a trademark, 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 also *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The Panel concludes that the disputed domain name contains the entirety of the Complainant's trademark, which remains easily recognizable. The Panel furthermore accepts that the addition of the term "jiafeng" after the Complainant's trademark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. The Panel also finds that the applicable generic Top-Level Domain ("gTLD") (".com" in this proceeding) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Further, reviewing the facts of this proceeding, the Panel notes that the disputed domain name directs to a website which shows a clear intent on the part of the Respondent to obtain commercial gain from misleading Internet users by using the Complainant's HNB trademark in the disputed domain name, to offer unauthorized IQOS-branded products as well as competing third party products and allegedly infringing accessories to such Internet users. Furthermore, the Panel has also taken into account the Complainant's evidence from which it is clear that the Respondent prominently displays the Complainant's IQOS logo and word mark and uses the Complainant's own product images likely protected by copyright, without providing any disclaimer regarding the relationship between the Respondent and Complainant. It is clear to the Panel from the foregoing elements that the Respondent is not acting as a good faith provider of goods or services under the disputed domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) and that there are also no other circumstances or factual elements conferring any rights or legitimate interests in the disputed domain name on the Respondent.

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

Given the strong reputation of the Complainant's prior registered trademarks for HNB and IQOS, the Panel finds that by registering the disputed domain name, which contains the HNB trademark in its entirety, the Respondent consciously targeted the Complainant's prior registered trademark. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademark that the Respondent knew, or at least should have known, of the existence of the Complainant's HNB trademark at the time of

registering the disputed domain name. The Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to a website used by the Respondent as an e-commerce website for unauthorized IQOS-branded products as well as competing third party products and allegedly infringing accessories. Such website clearly displays the Complainant's IQOS marks and logos on the home page and throughout the rest of the website, without the authorization of the Complainant, and prominently uses the Complainant's official product images (thereby likely violating its copyrights) throughout such website. The Panel also notes that the Respondent uses a misleading copyright notice in English "copyright © 2023 www.hnbjiafeng.com All rights reserved" which seems to wrongly claim copyright in the images and content on such website, and which is likely to further mislead Internet users into believing that the Respondent is an affiliate of, licensee, or official distributor of, or at least otherwise connected to the Complainant, which it is not. The Panel concludes that the Respondent intentionally attracted Internet users for commercial gain to the disputed domain name, by creating consumer confusion between the disputed domain name and the Complainant's trademark (see paragraph 4(b)(iv) of the Policy). Moreover, the Panel also finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark-abusive domain name registrations. In this regard, the Panel refers to the Respondent's involvement as a respondent in a previous, very similar UDRP case in which the respective panel concluded that the Respondent had registered and used the respective domain names incorporating the HNB marks in bad faith, see *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)*, *supra*. The preceding elements lead the Panel to conclude that the Respondent is using the disputed domain name in bad faith. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement under 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 <hnbjiafeng.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: April 11, 2023