

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. D2023-0772

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 <iqhk.net> is registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which partly differed from the named Respondent (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint in English on February 28, 2023.

On February 27, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 28, 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 March 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 27, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 30, 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 part of the group of companies affiliated to Philip Morris International Inc. ("PMI"), which sells tobacco and smoke-free products. One of its products, known as "IQOS", is a precisely controlled heating device into which specially designed tobacco sticks are inserted and heated to generate a nicotine-containing aerosol. The IQOS system is currently sold in many countries of which China is not one. The Complainant owns multiple trademark registrations in multiple jurisdictions, including the following:

- International trademark registration number 1218246 for IQOS, registered on July 10, 2014, designating multiple jurisdictions, specifying goods in classes 9, 11, and 34;
- Chinese trademark registration number 16314286 for IQOS, registered on May 14, 2016, specifying goods in class 34;
- International trademark registration number 1329691 for IQOS in a particular script and in colors, registered on August 10, 2016, designating multiple jurisdictions, including China, specifying goods in classes 9, 11, and 34;
- International trademark registration number 1331054 for a figurative mark in colors (the "hummingbird logo"), registered on October 11, 2016, designating multiple jurisdictions, including China, specifying goods in classes 9, and 34;
- Chinese trademark registration number 23295992 for IQOS THIS CHANGES EVERYTHING, registered on March 14, 2018, specifying goods in class 11; and
- European Union trademark registration number 018226787 for IQ, registered on August 5, 2020 (applied for on April 16, 2020), specifying goods in classes 9, and 34.

The above trademark registrations remain current. PMI also uses the domain name <pmi.com> in connection with a website where it provides information about its products and displays photographs of IQOS heated tobacco products.

The Respondent is an individual and a company based in China.

The disputed domain name was created on March 15, 2018. It resolves to a website in Chinese that is an online store purportedly offering for sale the Complainant's IQOS system, as well as competitor tobacco products and third party accessories that bear the IQOS logo. The website displays as its title the Complainant's IQOS mark, as registered in a stylized script and colors, including in the phrase "IQOS THIS CHANGES EVERYTHING". It also prominently displays the Complainant's hummingbird logo. The website displays multiple images of the Complainant's products and IQOS store get up, as well as other images reproduced from the Complainant's website. Prices are displayed in RMB.

According to evidence provided by the Complainant, at least one prior UDRP panel has found that the Respondent registered and was using other domain names in bad faith. See *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) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), WIPO Case No. [D2022-0737](#) regarding <iqsod.com> and <iqsscn.com>. The content of the websites in that dispute was similar to that of the website associated with the disputed domain name in the present dispute.

5. Parties' Contentions

A. Complainant

The Complainant is the registered proprietor of numerous trademarks in numerous jurisdictions. The disputed domain name reproduces the Complainant's IQ trademark in its entirety, in addition to the geographical abbreviation for Hong Kong, China, *i.e.* "hk".

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQ trademark. The Respondent is not only offering the Complainant's products but also competing tobacco products and accessories of other commercial origin. The website is also offering a third party cleaning apparatus which infringes the Complainant's IQOS trademark.

The disputed domain name was registered and is being used in bad faith. It is evident from the Respondent's use of the disputed domain name that the Respondent registered and used it 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 trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. The Respondent has engaged in a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademarks.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin script, not Chinese and the website associated with the disputed domain name includes a number of English words and/or phrases, suggesting that the Respondent understands English; whereas the Complainant has no knowledge of Chinese; and there are issues of time and costs.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the IQ and IQOS marks.

The disputed domain name wholly incorporates the IQ mark as its initial element. It adds the letters “hk”, which are an abbreviation for Hong Kong, China. However, the addition of this geographical term does not prevent a finding of confusing similarity because the IQ mark remains clearly recognizable within the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8. The Panel has taken note that the IQ mark was only registered after the disputed domain name but considers it sufficient for the purposes of the first element of paragraph 4(a) of the Policy that the Complainant held its rights in that mark at the time when it filed the Complaint, as is the case here. Nevertheless, given the relevance of the timing of the registration of the mark to the evaluation of bad faith under the third element below, the Panel will continue to compare the disputed domain name with another of the marks in which the Complainant has established that it holds rights.

The disputed domain name incorporates the first half of the IQOS mark as its initial element, followed by the letters “hk”, which refer to Hong Kong, China. Although the disputed domain name does not incorporate the entirety of the IQOS mark, the Panel considers that it incorporates sufficient recognizable aspects of that mark to give rise to the inference that the disputed domain name is intended to target that mark. The Panel finds confirmation for that inference in the content of the website associated with the disputed domain name, which prominently displays the IQOS mark, including in its title. See [WIPO Overview 3.0](#), section 1.15.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.net”). This element may be disregarded in the comparison between a domain name and a trademark for the purposes of the first element of paragraph 4(a) of the Policy, unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

For the above reasons, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights. The Complainant has satisfied the first condition in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain name resolves to a website that is an online store purportedly offering for sale the Complainant's IQOS products. The website displays multiple trademarks belonging to the Complainant, including IQOS, IQOS THIS CHANGES EVERYTHING, and the hummingbird logo, and images of the Complainant's products. However, the website also sells competitor products. The Complainant submits that it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its trademarks. Based on this record, the Panel is unable to find that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Further, as the Respondent's website is clearly commercial, it is not making a legitimate noncommercial or fair use of the disputed domain name.

With respect to the second circumstance set out above, the Respondent's name is listed in the Registrar's Whois database as 赵波 (ZhaoBo) and 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si), which may be translated as "Shanghai Yujia Trading Co., Ltd". There is no evidence that the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because it did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] website or location.

With respect to registration, the disputed domain name was registered in 2018, at least two years before the Complainant's IQ mark was registered or even applied for. Nothing on record indicates that the Respondent

could have had the IQ mark in mind when it registered the disputed domain name, nor that it registered the disputed domain name in anticipation of rights in that mark. See [WIPO Overview 3.0](#), section 3.8.

On the other hand, the disputed domain name was registered after the registration of the Complainant's IQOS mark, including in China where the Respondent is based. The website associated with the disputed domain name prominently displays the IQOS mark as its title, including in the particular script and colors in which that mark is registered. The website offers for sale the Complainant's IQOS products, among other things, and displays multiple images of those products. This all gives the Panel reason to find that the Respondent was aware of the Complainant and targeted its IQOS mark when it registered the disputed domain name.

With respect to use, the disputed domain name resolves to a website that is an online store offering for sale the Complainant's IQOS products, as well as competitor products. The website displays multiple trademarks belonging to the Complainant. Given these circumstances and the findings in Section 6.2.B above, the Panel finds that the Respondent is using the disputed domain name intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of the products on that website, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 <iqhk.net> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: April 11, 2023