

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu
Case No. D2023-0837

1. The Parties

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

Respondent is Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu, Netherlands.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 25, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to Complainant on March 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 6, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 17, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 24, 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

Complainant is a company organized under the laws of Switzerland and forms part of the larger “Philip Morris International” group of companies (“PMI”), which is engaged in the production and distribution of tobacco and smoke-free products that are being sold in approximately 180 countries worldwide. As part of its so-called “Reduced Risk Products”, PMI has developed and sells a tobacco heating system called IQOS.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its product brand IQOS, *inter alia*, but not limited to the following European Union Trade Mark which enjoys protection e.g. for the territory of the Netherlands:

- word mark IQOS, European Union Intellectual Property Office (EUIPO), registration number: 1218246, registration date: July 10, 2014, status: active.

Respondent, according to the disclosed Whois information for the disputed domain name, is legally domiciled in the Netherlands and registered the disputed domain name on June 8, 2022. By the time of the rendering of this decision, the disputed domain name does not resolve to any content on the Internet. Complainant, however, has demonstrated that at the time of the filing of the Complaint, the disputed domain name resolved to a website at “www.erviniqos.com”, promoting an online shop (in the Persian language and pointing to Iran (Islamic Republic of)) allegedly offering and selling Complainant’s IQOS tobacco heating system (though it is currently not officially sold here), thereby using a number of Complainant’s official product images and also prominently displaying Complainant’s IQOS trademark and official logo without any authorization to do so.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant submits that the disputed domain name is confusingly similar to Complainant’s IQOS trademark, as it identically adopts the latter, merely added by the non-distinctive and descriptive word “ervin”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has not licensed or otherwise permitted Respondent to use its IQOS trademark or to register a domain name incorporating it, (2) Respondent is not an authorized distributor or reseller of Complainant’s IQOS system and still creates the false impression of an affiliation with Complainant which does not exist, and (3) Respondent prominently and without authorization represents Complainant’s IQOS trademark and official logo as well as official product images, thereby falsely claiming copyright in such material. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) the term IQOS is purely an imaginative term and unique to Complainant, (2) it is evident from Respondent’s use of the disputed domain name that it knew of Complainant’s IQOS trademark when registering the disputed domain name, and (3) by reproducing Complainant’s IQOS trademark in the disputed domain name and on the website thereunder, Respondent is clearly suggesting to any Internet user that Complainant or an affiliated dealer is the source of such website which it is not, doing so obviously for some commercial gain.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name <erviniqos.com> is confusingly similar to the IQOS trademark in which Complainant has rights.

The disputed domain name incorporates the IQOS trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, 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 trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists, that the addition of other terms (whether e.g. descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP (see [WIPO Overview 3.0](#), section 1.8). Accordingly, the addition of the term/name "ervin" does not prevent the Panel to find confusing similarity arising from the incorporation of Complainant's entire IQOS trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's IQOS trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the imaginative term "iqos" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, let the disputed domain name resolve to a website at "www.erviniqos.com", promoting an online shop (in the Persian language and pointing to Iran (Islamic Republic of)) allegedly offering and selling Complainant's IQOS tobacco heating system (though it is currently not officially sold here), thereby using a number of Complainant's official product images and also prominently displaying Complainant's IQOS trademark and official logo without any authorization to do so. Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy (not even under the so-called "Oki Data" principles which would have required Respondent to accurately disclose the (non-existent) relationship with Complainant, which Respondent obviously did not, see [WIPO Overview 3.0](#), section 2.8).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in the IQOS trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is confusingly similar to Complainant's IQOS trademark, to run a website at "www.erviniqos.com", promoting an online shop (in the Persian language and pointing to Iran (Islamic Republic of)) allegedly offering and selling Complainant's IQOS tobacco heating system (though it is currently not officially sold here), thereby using a number of Complainant's official product images and also prominently displaying Complainant's IQOS trademark and official logo without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's IQOS trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In connection with this finding, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information at the time it registered the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated March 15, 2023 could not be delivered due to a bad address. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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 <erviniqos.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: May 4, 2023