

## **ADMINISTRATIVE PANEL DECISION**

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

Case No. D2023-1648

### **1. The Parties**

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

The Respondents are 赵波 (Zhao Bo) and 波波 (BoBo), 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si).

### **2. The Domain Names and Registrar**

The disputed domain names <iqqchn.com> and <iqsnn.com> are 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 April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Private Registrations) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 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 April 19, 2023.

On April 19, 2023, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 19, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondents 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 Respondents of the Complaint, and the proceedings commenced on April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on May 25, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on June 5, 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 a group of companies affiliated with Philip Morris International Inc. ("PMI"). PMI is an international tobacco company with products sold in around 180 countries. PMI has developed a number of tobacco products including a tobacco heating system called IQOS. They are sold under the brand names "Heets", "HeatSticks", and "Terea". There are currently five versions of the IQOS heating device available.

The Complainant is also the owner of several trade mark registrations for IQ and IQOS, including the following:

Trade Mark	Registration Number	Registration Date	Jurisdiction
IQ (word)	322648	February 27, 2020	United Arab Emirates
IQOS (word)	16314286	May 14, 2016	China
 (device)	16314287	May 14, 2016	China
IQOS THIS CHANGES EVERYTHING (word)	23295991, 23295992, 23295993	March 14, 2018	China
 (device)	1347235	January 24, 2017	China
 (device)	49789993	June 21, 2021	China
IQOS (word)	1218246	July 10, 2014	International
 (device)	1338099	November 22, 2016	International
 (device)	1329691	August 10, 2016	International, including China
 (device)	1331054	October 11, 2016	International, including China

The disputed domain name <iqqchn.com> was registered on November 4, 2020. The disputed domain name <iqsnn.com> was registered on November 23, 2020. At the date of this Complaint, the disputed domain names resolved to retail websites allegedly selling and offering the Complainant's IQOS System along with other third-party products.

The Respondents are based in China. The Respondents are also the respondent to a previous UDRP complaint filed by the Complainant, 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](#).

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that:

- (a) The disputed domain names are confusingly similar to its trade marks. The disputed domain names wholly incorporate the Complainant's IQ trade mark and/or a mark phonetically similar to the Complainant's IQOS trade mark with the geographical abbreviation "chn" and the letter "q" in relation to <iqqchn.com> and with the letters "nn" in relation to <iqsnn.com>. The generic Top-Level Domain ("gTLD") ".com" in the disputed domain names do not eliminate the overall notion that the designations are connected to the trade mark and the likelihood of confusion that the disputed domain names and the trade mark are associated;
- (b) The Respondents have no rights or legitimate interests in the disputed domain names. The Respondents are not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant's trade mark. The Respondents are not commonly known by the disputed domain names, and have not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names; and
- (c) The disputed domain names were registered and are being used in bad faith. The mere fact that the Respondents have registered multiple domain names incorporating a mark with a distinctive name gives rise to an inference of bad faith. Based on the use of the disputed domain names, the Respondents registered and are using the disputed domain names to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark.

The Complainant requests the transfer of the disputed domain names.

### B. Respondent

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

## 6. Discussion and Findings

### 6.1 Preliminary Issues – Language of the Proceeding

According to paragraph 11(a) of the Rules, 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.

In this case, the language of the Registration Agreement for the disputed domain names is in Chinese. Based on the given evidence, there is no agreement between the Complainant and the Respondents regarding the language of the proceeding. The Respondents did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- a) the disputed domain names are in Latin script and not in Chinese script;
- b) the disputed domain names resolve to websites that include English; and
- c) in order to proceed in Chinese, the Complainant would have to retain specialised translation services at a cost likely to be higher than the overall costs of the Complaint.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondents of the proceeding in both English and Chinese.
- the Respondents have not commented on the language of the proceeding.
- the websites under the disputed domain names include English.
- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

## **6.2 Preliminary Issues – Consolidation of Respondents and Multiple Domain Names**

The Panel notes that the present Complaint has consolidated multiple domain name disputes. At the time of filing the Complaint the Complainant was not aware who the registrant of each domain name was. This was provided by the Registrar after the Complaint was filed.

According to paragraph 10(e) of the Rules, the Panel has the power to consolidate multiple domain name disputes. Paragraph 3(c) of the Rules also provides that a complaint may relate to more than one domain name, provided that the domain names are arguably registered by the same domain-name holder. The Panel has the authority to consolidate multiple domains into one dispute provided that (i) the domain names are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. (See sections 4.11.2 and 4.16 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

In this case, the Complainant relies on the following facts to show that the disputed domain names are subject to common control:

- The registrant information for the disputed domain names is identical or similar, with the same organization being 上海聿家贸易有限公司 (Shang Hai Yu Jia Mao Yi You Xian Gong Si);
- The website associated with the disputed domain name <iqsnn.com> contains hyperlinks that redirect users to another website which is the same website the dispute domain name <iqqchn.com> resolves to;
- The disputed domain names are similar in composition, *i.e.*, the Complainant's IQ trademark plus additional letters;
- The websites to which the disputed domain names resolve make use of similar copyrighted images.

For the above reasons, the Panel accepts the Complainant's application to consolidate the disputed domain names in the Complaint and refers hereinafter to the Respondents as the "Respondent".

## **6.3 Substantive Issues**

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

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

## A. Identical or Confusingly Similar

The Panel finds that the disputed domain names <iqqchn.com> and <iqsnn.com> are confusingly similar to the Complainant's trade marks IQ and IQOS. Both the disputed domain names incorporate the IQ trade mark in full and the disputed domain name <iqsnn.com> incorporated "iqs" which is phonetically similar to the Complainant's IQOS trade mark. The disputed domain name <iqqchn.com> is further accompanied with the additional letter "q" and the geographical abbreviation for China "chn" while the disputed domain name <iqsnn.com> is accompanied with the letters "nn". The disputed domain names are then accompanied with the generic Top-Level Domain ("gTLD") ".com". The gTLD is generally disregarded when considering the first element. (see section 11.1 [WIPO Overview 3.0](#))

The Panel notes that the Complainant did not rely on any registered trademarks for IQ in China where the Respondent is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of [WIPO Overview 3.0](#))).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

## B. Rights or Legitimate Interests

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain names.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain names.

In making this finding, the Panel has considered in relation to the disputed domain name <iqqchn.com> the fact that the IQ trade mark is not (based on the available record) registered in China but only the IQOS mark. The Panel is however satisfied from the evidence submitted that IQ is used to identify the Complainant's products, and as set out below the registration was made in bad faith and the disputed domain name has been used in bad faith.

The Panel notes that the disputed domain names resolve to a page that advertises IQOS products. No allegation is made in the Complaint that these are counterfeit. The Panel will consider the matter on the assumption that genuine products are being sold.

In principle, it is not objectionable to resell or promote for resale genuine trademarked goods by reference to the mark. Further, as long as certain conditions are met a seller can make use of a trademark in a domain name to sell genuine products. In *Ok! Data Americas, Inc. v. ASD, Inc.* WIPO Case No. [D2001-0903](#), the panel in that case held that to be "*bona fide*" within the meaning of paragraph 4(c)(i) of the Policy, the offering should meet the following requirements:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the site to sell only the trade marked goods; otherwise, it could be using the trade mark to bait internet users and then switch them to other goods;
- The site must accurately disclose the registrant's relationship with the trade mark owners; it may not, for example, falsely suggest that it is the trade mark owner, or that the website is the official site; and
- The Respondent must not try to corner the market in all domain names, thus depriving the trade mark owner of reflecting its own mark in a domain name.

In this case the Respondent does not meet, at least, the second and third requirements set out above. The websites under the disputed domain names sell not only the Complainant's IQOS products but also other third party products, and they do not accurately disclose their relationship with the Complainant, rather they clearly purport to be official IQOS retail websites when, in fact, they are not.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

### **C. Registered and Used in Bad Faith**

Based on the given evidence, the Panel finds that the disputed domain names were registered and are being used in bad faith.

The disputed domain names were registered after the Complainant has registered the IQ and IQOS trade marks. The Respondent provides information and advertisements on the Complainant's products and competing products on its websites soon after registering the disputed domain names. The websites to which the disputed domain names resolve make use of similar copyrighted images. The Panel is satisfied that the Respondent was aware of the Complainant and its IQ and IQOS trade marks when the Respondent registered the disputed domain names.

The Respondent has registered the disputed domain names to attract Internet users to the websites for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. By reproducing the Complainant's IQ and IQOS trade marks in the disputed domain names, and displaying advertisements for selling the Complainant's products and other competing products on the websites of the disputed domain names, the Respondent is clearly seeking to attract users for commercial gain. As mentioned above, the Respondent is also a serial cybersquatter. 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)*, *supra*.

For the above reasons, the Panel finds that the disputed domain names were registered and are being used in bad faith.

The Complainant has therefore 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 names, <iqqchn.com> and <iqsnn.com>, be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: June 20, 2023