

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Mohammad Heydari, GreenHost  
Case No. D2023-2862

### **1. The Parties**

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

The Respondent is Mohammad Heydari, GreenHost, Denmark.

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

The disputed domain name <mriqos.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 5, 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 and contact information in the Complaint (GreenHost). The Center sent an email communication to the Complainant on July 21, 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 on July 24, 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 the Respondent of the Complaint, and the proceedings commenced on August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on August 28, 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 is a leading international tobacco and smoke-free products company selling its products in approximately 180 countries of the world.

PMI has developed a number of so-called reduced risk products, which are likely to present, or have the potential to present less risk of harm to smokers who switch to those products instead of continued smoking. One of the PMI's reduced risk products is the tobacco heating system called IQOS, which is comprised of five versions of precisely controlled heating devices into which specially designed tobacco sticks are inserted.

Among others the Complainant owns the International Trademark Registration No. 1218246 for the word mark IQOS registered since July 10, 2014, in relation to tobacco and smoker's articles and services.

The disputed domain name was registered on January 23, 2023, and resolves to an online shop in Persian language that is allegedly selling and offering the Complainant's IQOS system, as well as competing third party products of other commercial origin.

The market to which the website at the disputed domain name directs to appear to be Iran, however the Complainant's IQOS system is currently not sold there.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name, which fully incorporates its IQOS trademark is confusingly similar to it because the addition of the term "mr" to the trademark in the disputed domain name is not sufficient to distinguish the disputed domain name from the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- the use of its trademark, logo and imagery on the website at the disputed domain name shows the Respondent's awareness of its trademark at the time of registration of the disputed domain name as well as the Respondent's intent to deceive consumers into believing that it is a website operated or authorized by the Complainant.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Procedural Matter – Language of the Proceeding**

Under 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.

Despite the Center’s clear request to indicate the language of the registration agreement used by the registrant for the disputed domain name, in its verification of July 5, 2023, the Registrar only confirmed that that “the specific language of the registration agreement is in both German and English language”. Hence in view of the Panel it is not clear and conclusive which of these languages was used by the registrant concerning the disputed domain name.

The Complainant submitted its Complaint in English and requested that English be the language of the proceeding.

The Complainant’s business is primarily conducted in English.

The Respondent appears to be residing in Denmark and did not show any intent to participate in the proceedings. The website to which the disputed domain name resolves is in Persian language. None of these facts give grounds for considering the German language as the language of this proceeding.

Therefore, observing the spirit of paragraph 11 of the Rules the Panel agrees with the Complainant that this proceeding be conducted in English, one of the languages in use by the Registrar.

### **6.2 Substantive Matters – Three Elements**

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

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

#### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the disputed domain name is confusingly similar to the mark for the purposes of the Policy. The entirety of the mark is reproduced within the disputed domain name. While the addition of other

terms (in this case “abbreviation “mr” for Mister) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7 and 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4, and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The Respondent is not affiliated with the Complainant in any respect and the Complainant has not authorized the Respondent to use its IQOS trademark in a domain name or otherwise.

Still, the Respondent is effectively impersonating the Complainant as it uses the disputed domain name to confuse Internet users presumably looking for the Complainant through redirecting them to its own website, which is extensively displaying the Complainant’s trademark, its signature logo and related imagery without any authorization, and for the most part purportedly offers for sale the Complainant’s products. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations, 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 location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes that the Respondent reproduced the Complainant's distinctive trademark in the disputed domain name and is using the Complainant's signature logo, imagery, and product photos on the website at the disputed domain name. Thus, the Respondent obviously had full knowledge of the Complainant's business and trademark at the time of registration of the disputed domain name and had registered it in order to target the Complainant and its trademark through impersonation or false association. [WIPO Overview 3.0](#), section 3.2.1. UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel also notes that the Complainant's IQOS system is currently not sold in Iran, which appears to be market to which the disputed domain name is directed to. Yet, the Respondent's website, listing Tehran, the capital of Iran as the seat of its head office falsely suggests to Internet user that the Complainant's IQOS system is legitimately available in the Iranian market. Such deliberate false activity is harmful to the Complainant and is in view of the Panel further evidence of the Respondent's bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

### **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 <mriqos.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: September 11, 2023