

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Kaloyan Donkov
Case No. D2023-4623

1. The Parties

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

The Respondent is Kaloyan Donkov, Bulgaria.

2. The Domain Name and Registrar

The disputed domain name <iqosbg.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2023. On November 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Individual) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 November 10, 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”).

On November 14, 2023, the Respondent sent an email communication to the Center that included a willingness to engage in settlement talks. However, the Complainant did not request a suspension. Accordingly, in accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. The Center sent the Commencement of Panel Appointment Process to the Parties on January 7, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on January 12, 2024. 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.

The Panel issued Procedural Order No. 1 (“PO1”) on February 5, 2024, and Procedural Order No. 2 (“PO2”) on February 29, 2024. The Complainant submitted its response to PO1 on February 13, 2024. The Respondent provided its comments in response to PO1, and to the Complainant’s submission, on February 16, 2024. The Respondent submitted its response to PO2 on March 7, 2024, and the Complainant provided its comments in response to PO2, and to the Respondent’s submission, on March 15, 2024. Details of the Orders, and Parties’ responses thereto, are set out below insofar as the Panel considers them relevant to the decision.

4. Factual Background

The Complainant is part of the group of tobacco companies affiliated with Philip Morris International, Inc.

Amongst other things, the group produces tobacco products branded “Heets” or “HeatSticks”, that are designed to be inserted into another of the Complainant’s products, “IQOS”, a heating device which the Complainant describes as a so-called “Reduced Risk Product”. There are approximately 19.1 million users of the IQOS system worldwide.

The Complainant owns many trade marks for IQOS including International Registration No. 1218246, registered on July 10, 2014, in classes 9, 11, and 34.

The Complainant also owns International Registration No. 1214415 for the following device mark Q, registered on June 11, 2014, in classes 9, 11, and 34:



The Complainant owns United Kingdom Registration No. UK00918226787 for IQ, registered on August 5, 2020, in classes 9 and 34.

The disputed domain name was registered on December 1, 2017.

As of May 25, 2018, the Respondent used the disputed domain name for a website in Bulgarian (“the Old Site”) that was headed “IQOS Cases”, and which stated prominently: “Here you will find a variety of stickers, cases and wallets specially made for IQOS devices...”. The homepage contained images of the Complainant’s products in conjunction with the Respondent’s accessories.

At a later point, the Respondent launched a different version of the website (“the New Site”) offering car stickers for sale (unrelated to the Complainant’s products). The website was in Bulgarian and headed with the following “IQ accessories” logo:



The footer contained a copyright notice in the name of “IQ Original Stickers”.

The Respondent also operates a Facebook page at “www.facebook.com/IQcarstickers” that was created on April 20, 2019. This page is branded “IQ Car stickers”, and it contains multiple posts promoting car stickers.

The disputed domain name does not currently resolve to a website.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends in the Complaint, and in reply to PO1 (in each case in relation to use of the disputed domain name to resolve to the New Site) that:

- by using the Complainant's IQOS trade mark in the disputed domain name together with "bg", the geographical abbreviation for Bulgaria, the Respondent is clearly purporting to be an official online retailer of the Complainant's IQOS system in Bulgaria;
- the Respondent displays a logo that combines the Complainant's IQ mark with a design very similar to the Complainant's Q logo, both prominently on the website and as a browser tab "favicon", and the "I" in the Respondent's logo incorporates an illustration of the Complainant's own product;
- the inclusion of "IQ Original" in the copyright notice on the New Site strengthens the false impression of affiliation with the Complainant;
- users will falsely believe that the Respondent's website is an official/endorsed distributor of the Complainant's products as the Complainant's IQOS system is primarily distributed through official/endorsed channels;
- the Respondent set out to create a likelihood of confusion with the Complainant's mark as outlined above; and
- the Respondent is using the Complainant's IQOS mark to offer for sale third party products of other commercial origin and such abusive use of the Complainant's mark to promote competing products constitutes clear-cut trade mark infringement and is clear evidence of bad faith.

B. Respondent

The Respondent contends that the Complainant has failed to satisfy all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends in his informal response and his reply to PO1 (in each case in relation to use of the disputed domain name to resolve to the New Site) that:

- he registered the disputed domain name with the sole purpose of offering stickers that he had designed to promote safe and responsible driving;
- the disputed domain name consists of:

"iq": the abbreviation for intelligence quotient (a person's level of intelligence measured by tests);

"o": original, in that all sticker designs represent the Respondent's original artwork;

"s": stickers, the physical products on which his artworks are printed; and

"bg": Bulgaria/Bulgarian, the country where the products are offered, and the language used for the majority of artworks;

- as the Complaint acknowledges, "IQ Original Stickers" was clearly mentioned on the bottom of the page and could by no means be related to the Complainant's IQOS mark;
- the "IQ Car Stickers" branding on the Respondent's Facebook page is consistent with the above;
- the Respondent's website did not offer any of the Complainant's products or claim affiliation with the Complainant;
- the Respondent would have no reason or benefit in creating a false impression of a commercial connection with a tobacco company in order to promote safe and responsible driving via his car sticker designs;
- on the contrary any such connection would have a negative effect as most of the stickers warn of children or pregnant women in the car and it is well known that smoking is not recommended for these groups;
- the "IQ Accessories" logo is far more complex, and barely can be classified as identical with the Complainant's "Q" logo registered by the Complainant including in that the Respondent's logo includes the distinctive word "accessories", is light grey, not black, and contains an outline representing a sticker;
- Google searches show that "IQ" is a very common term and that searches for the Respondent's IQ logo bring up many logos similar to that of the Respondent, but not including the Complainant's Q logo; and
- while the website causes no harm to the Complainant, or confusion to end users, the Respondent intends no conflict and is open to discuss settlement.

The Respondent contends in his reply to PO2 (which drew attention to the Old Site) that:

- the Respondent reiterates that he used his website "IQ Original Stickers Bulgaria (www.iqosbg.com)" to promote his original design stickers;
- the Respondent has deleted the website as a gesture of good faith;
- the Old Site consistently identified "stickers" as the main product category found on the website;
- the Respondent's portfolio comprises a variety of stickers, including stickers compatible with electronic devices IQOS and Glo (the Complainant's products), stickers for mobile phones, stickers for Easter egg decorations, stickers for cars, and stickers dedicated for pet stores;
- the reason that the Respondent did not mention the Old Site previously was that the Complaint related only to the New Site;
- the Respondent offered stickers designed for IQOS products for about two years, but he discontinued these and other stickers due to low interest, and retained only car stickers in recent years; and
- the Respondent's website never offered any products produced by the Complainant, nor used its trade mark or logo, nor claimed any affiliation with the Complainant.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;

- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "bg") 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 1.8.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds 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 such as those enumerated in the Policy or otherwise.

As to paragraph 4(c)(i) of the Policy, and as further discussed in section 6.C below, the Panel considers that, by resolving the disputed domain name to both the Old Site and the New Site (at the time of filing the Complaint), the Respondent sought to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services and, indeed, to cover up evidence of infringement at the Old Site. Such use of the disputed domain name could not be said to be bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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.

In the present case, the Panel considers that the Respondent has intentionally attempted to attract Internet users to his website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

As discussed in section 4 above, the Respondent formerly used the disputed domain name for a website offering stickers, cases and wallets specifically designed for the Complainant's products. Later, the Respondent changed the website to simply offer car stickers unrelated to the Complainant.

However, instead of acknowledging that he had originally used the disputed domain name to offer a range of accessories for the Complainant's products, and that he had accordingly selected the disputed domain name because it reflected the Complainant's highly distinctive trade mark, i.e., the brand of the products to which the accessories related, the Respondent instead claimed that he had registered the disputed domain name with the "sole purpose" of offering stickers that he had designed to promote safe driving and that he had chosen the disputed domain name on the implausible basis that "iq" denoted a person's IQ (intelligence quotient) and "os" denoted "original stickers".

The Panel considers that both versions of the Respondent's site amount to bad faith use of the disputed domain name.

As regards the Old Site, the Respondent plainly selected the disputed domain name for use in conjunction with this website, i.e., as a domain name that comprised the Complainant's distinctive mark plus a geographical term. This formulation is generally seen as tending to suggest sponsorship or endorsement by the trade mark owner. [WIPO Overview 3.0](#), section 2.5.1. And by using the Old Site to offer accessories for the Complainant's products, without any discernible disclaimer, the Respondent set out to create the impression that the website was officially associated with the Complainant.

While the Respondent asserts that the Old Site consistently identified "stickers" as the main product category, the Panel does not read the Old Site as especially promoting stickers above the other accessories. But, even if it had, the Panel would still have considered it far more likely that the Respondent selected "iqos" in the disputed domain name by reference to the Complainant's IQOS trade mark, upon which all of the Respondent's accessories were focused, rather than as an abbreviation for "IQ Original Stickers".

The Respondent also claims that his portfolio comprises a wide variety of stickers for use in different settings. However, the only stickers shown on the Old Site are those customised for the Complainant's products.

The Panel would add that the Respondent's failure to disclose the real purpose and previous use of the disputed domain name, let alone attempt to justify it, indicate to the Panel that the Respondent knew that his registration, and previous use, of the disputed domain name were illicit.

As regards the New Site, while this did not include goods with any relevance to the Complainant's products or industry, it nonetheless again involved connecting a domain name carrying a clear risk of Complainant-affiliation with a website that lacked any discernible disclaimer. In the Panel's view, the reference to "IQ Original Stickers" is of no significance as it appeared only in the footer where it was unlikely to have been seen by most people and, in any case, this text was far from an unambiguous disclaimer of any connection with the Complainant.

In any case, given the composition of the disputed domain name, which clearly refers to the Complainant as discussed above, and also the content of the Old Site, the Panel considers on the balance of probabilities that the Respondent only adopted the “IQ”-related branding – such as it is – as a later defensive move to justify the holding of the disputed domain name and that the Respondent’s claimed justification lacks credibility. In these circumstances, in the Panel’s view, the Respondent’s use of “IQ Car Stickers” for his Facebook page since 2019 does not assist the Respondent.

In addition, the New Site was branded with a logo similar to that of the Complainant – see section 4 above. While, as the Respondent observes, there are some differences between the respective logos, the previous offering of accessories for the Complainant’s products indicates to the Panel that the logo on the New Site was unlikely to have been conceived independently of the Complainant’s logo.

The likelihood of confusion was not diminished by the possibility that users arriving at the New Site would realise that the site was not connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name created a risk of implied affiliation with the Complainant, and the Respondent profited from at least some of the traffic intended for the Complainant.

The Respondent asserts that he had no reason and gained no benefit from creating a false impression of a commercial connection with the Complainant in order to promote safe and responsible driving via his car sticker designs. That contention is undermined not only by the composition of the disputed domain name but also by its previous use to sell accessories for the products of the Complainant.

Finally, the Respondent states that he is open to settlement of the case and has deleted his website as gesture of good faith. However, such matters cannot retrospectively cure the bad faith registration and use of the disputed domain name or otherwise affect the outcome of this proceeding.

The Panel finds that the Complainant has established the third element 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 <iqosbg.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: March 21, 2024