

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Christopher Tabet, Iqos covers
Case No. D2024-0051

1. The Parties

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

The Respondent is Christopher Tabet, Iqos covers, Canada.

2. The Domain Name and Registrar

The disputed domain name <iqoscovers.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 January 8, 2024. On January 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 0168805248) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2024, 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 January 16, 2024.

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 January 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 12, 2024. The Respondent sent an email communication to the Center on February 9, 2024. On February 9, 2024, the Center sent a Possible Settlement email to the Parties. On February 15, 2024, the proceeding was suspended.

The Complainant, on February 27, 2024, sent an email communication to the Center requesting the Center to Reinstitute the Proceedings.

The Center appointed Daniel Peña as the sole panelist in this matter on March 11, 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.

4. Factual Background

The Complainant is a company which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI").

PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries.

The Complainant owns several trademarks. Among them are the following trademark registrations:

- Canadian Registration IQOS (word) No. TMA1,044,437 registered July 25, 2019;
- Canadian Registration IQOS (device) No. 1,106,780 registered on August 13, 2021; and
- Canadian Registration IQOS (word) No. TMA975,976 registered on July 18, 2017.

The disputed domain name was registered on September 28, 2023.

5. Parties' Contentions

A. Complainant

The Complainant is known for innovating across its brand portfolio. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs"), PMI has developed a number of RRP products. One of these RRP products developed and sold by PMI is a tobacco heating system called "IQOS". "IQOS" is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System").

The Complainant submits that the disputed domain name is confusingly similar to the IQOS trademark.

The disputed domain name is linked to an online shop (referred to as the "Website") allegedly selling and offering the Complainant's IQOS System, as well as competing third party products of other commercial origin. The Website is provided in English as well as presenting content related to Canada, clearly indicating that the Website is directed to Canadian consumers. The Respondent is using the Complainant's IQOS trademark in the disputed domain name together with the term "covers".

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that it is not affiliated with the Respondent and has not authorized it to use its IQOS trademark. It further contends that the Respondent is neither making bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainant submits that the Respondent's website cannot represent bona fide commercial use of the disputed domain name because the disputed domain name itself is misleading in nature, and because the website pretends to be an authorized site of the Complainant's by appropriating its IQOS trademark as well as the Complainant's own product images.

The Complainant submits that the Respondent also fails to make clear its own identity and the nature of its relationship with the Complainant.

The Complainant repeats its contentions referred to above and submits that both the disputed domain name and the content of the Respondent's Website are deliberately designed to give the false impression that the website is an official or authorized site of the Complainant.

The Complainant claims, in particular, that the Respondent registered and has used the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks.

The Complaint reiterates that IQOS is an invented term and submits that it is obvious from the Respondent's use of the disputed domain name to offer the Complainant's products for sale that it intended the disputed domain name to refer to the Complainant's trademarks.

The Complainant submits that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent responded to the Complaint by referring to the fact that it had removed the website as well as the disputed domain name, without presenting facts or arguments.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed 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 disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

The Panel holds that the disputed domain name is confusingly similar to the Complainant's trademark IQOS. The Respondent's incorporation of the Complainant's trademarks in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's marks. Mere addition of the term "covers" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's marks.

The Complainant has provided evidence of its rights in the trademarks on the basis of its multiple IQOS trademark registrations in Canada. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#). Further, the addition of the generic Top-Level Domain ".com" to the disputed domain name is a standard registration requirement and as such is disregarded.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a prima facie case which, if not rebutted by relevant evidence from the Respondent will lead to this ground being set forth. Refraining from submitting a Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name.

The Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner.

The Respondent has not clarified or justified why he included in his name at the time of carrying out the registration the expression "Iqos covers".

The Respondent did not submit a Response with arguments or facts or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b). Furthermore, the unrebutted claim of the Complainant that the disputed domain name is being used for deliberately attracting Internet users to the Respondent's Website in the mistaken belief that it was the website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel also finds that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 website or location or of a product or service on its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and use of the trademark prior to registering the disputed domain name. In this case, the widespread commercial recognition of the trademark IQOS is such that the Respondent must have had knowledge of the trademark before registering the disputed domain name. The Respondent appears to have chosen the disputed domain name in order to deliberately attract Internet users to the Website misleading them to believe that it is the website of the Complainant, or otherwise linked to or authorized by the Complainant. That impression is only reinforced by the content of the Respondent's Website whereby the Complainant's marks and content are included as well as a false indication about the commercial presence of the Complainant on the Canadian market.

In this Panel's view, use in bad faith is evidenced also by the purported distribution and selling of the Complainant's devices and products through the Website to which the disputed domain name is directed, and the absence of a disclaimer disclosing the relationship between the Parties (or lack thereof). As such, the Panel is satisfied that by using the disputed domain name, the Respondent has intentionally attempted 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 its website or of the products on its website.

Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. Thus, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

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 <iqoscovers.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: March 25, 2024