

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Saeed Farahani, IQOS LAND
Case No. D2024-1368

1. The Parties

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

The Respondent is Saeed Farahani, Persian ART, India).

2. The Domain Name and Registrar

The disputed domain name <xxxxxxxxxiqosxlandxxxxxxxx.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 30, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2024, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 23, 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 April 24, 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 April 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 15, 2024.

The Center appointed Olga Zalomyi as the sole panelist in this matter on June 3, 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 tobacco company, which is part of the group of companies affiliated with Philip Morris International Inc., a leading tobacco and smoke-free company. The Company manufactures and sells 5 versions of tobacco heating systems under various IQOS brands. The Complainant is the owner of several IQOS, ILUMA and HEET trademarks worldwide, including:

- International Registration No. 1218246 for the mark IQOS (word) registered on July 10, 2014;
- International Registration No. 1326410 for the HEETS (word) mark, registered on July 19, 2016;
- International Registration No. 1764390 for the ILUMA (word) mark, registered on October 12, 2023.

The disputed domain name was registered on January 14, 2023. It directs to a website in Arabic that offers for sale purported IQOS systems, third party accessories for its products and competing third party products of other commercial origin in Iran. The website at the disputed domain name did not provide any information about its owner, which was identified as "iQOS Land" and states in Persian that it is "[t]he main representative of heets and iQOS in Iran iQOS Land is the sales representative of Heets and iQOS products and all kinds of Heets cigarettes in different flavors and colors in Iran" The website under the disputed domain name displays IQOS trademark together with the word "land" and a number of the Complainant's official product images and Complainant's marketing materials, as well as other Complainant's registered trademarks.

The Respondent has been a respondent in two prior domain name cases, in which he registered and used in bad faith domain names incorporating the Complainant's IQOS mark. ¹

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 is confusingly similar to the Complainant's IQOS trademark because the disputed domain name incorporates the Complainant's IQOS mark in its entirety. The generic Top Level Domain ("gTLD") ".com" in the disputed domain name is disregarded under the confusing similarity test as a standard registration requirement. The addition of the non-distinctive prefix and suffix "xxxxxxxx" and the descriptive word "land" to the Complainant's IQOS trademark in the disputed domain name is not sufficient to overcome the confusing similarity between the mark and the disputed domain name.

According to the Complainant, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, because the Respondent lacks authorization or a license to register a domain name incorporating the IQOS mark owned by the Complainant. Furthermore, the Complainant contends that the Respondent's actions indicate an intention to unfairly gain commercially due to several factors: 1) the Respondent is not authorized distributor or reseller of IQOS Systems; 2) the website under the disputed domain name does not meet the requirements for a bona fide offering of goods, because: (i) the website under the disputed domain name offers the Complainant's products together with third party goods and accessories; (ii) the composition of the disputed domain name suggest affiliation with the Complainant and its IQOS mark; (iii) the owner / administrator of the website, prominently and without authorization presents the Complainant's registered IQOS trademark and the Complainant's official product images; (iii) the

¹ Philip Morris Products S.A. v. Saeed Farahani, Persian Art, WIPO Case No. [D2022-0238](#); Philip Morris Products S.A. v. Saeed Farahani, WIPO Case No. [D2022-2822](#)

website claims copyright in the Complainant's copyrighted material appearing on the website; (iv) The website does not provide information about the identity of the provider, only identifying itself as "IQOS LAND". The Complainant argues that consumers are likely to mistakenly believe that the website associated with the disputed domain name is operated by an official or endorsed distributor given that the Complainant's IQOS System is distributed through official or endorsed stores, none of which currently exists in the territory of Iran. Yet, the Complainant states that the website under the disputed domain displays a statement in Persian that it belongs to "the main representative of heets and IQOS in IRAN".

The Respondent's registration and use of the disputed domain name constitutes bad faith because it is evidence that the Respondent knew of the Complainant's IQOS trademark at the time of the disputed domain name registration by offering IQOS System for sale on the website at the disputed domain name. The Complainant contends that the Respondent chose the disputed domain name intending to invoke a misleading association with the Complainant because the term "IQOS" is unique to the Complainant. The Complainant claims that the Respondent registered and is using the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's registered IQOS trademark as to the source, sponsorship, affiliation, or endorsement of its website or its services. According to the Complainant, by reproducing the Complainant's trademark in the disputed domain name and by using the Complainant's product images, the Respondent's website suggests the affiliation between the Complainant and the Respondent. The Complainant contends that the Respondent's involvement into two prior domain name disputes regarding domain names incorporating the Respondent's mark, show a pattern of bad faith conduct. The Complainant states that the Respondent's use of a privacy protection service to hide its true identity may in itself constitute a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Disputed domain name:

- (i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

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.

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 the IQOS mark is recognizable 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. It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, "xland" and suffix and prefix "xxxxxxxx", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 recognized 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.

Here, the evidence on file shows that the Respondent has not been commonly known by the disputed domain name because the Respondent’s name is reportedly “Saeed Farahani” (despite its store name supposedly being “IQOS LAND”). Second, the Complainant contends, and the Respondent does not deny that the Complainant did not authorize the Respondent’s use of the Complainant’s trademark in the disputed domain name. Third, the Respondent is not making legitimate noncommercial or fair use of the disputed domain name, because the Respondent is using the disputed domain name, which suggests affiliation between the Complainant and the Respondent, to direct to an online store selling purported IQOS Systems, third party products and third party accessories.

Previous UDRP panels have recognized that resellers or distributors using domain names containing complainant’s trademark to undertake sales of the complainant’s goods may be making a bona fide offering of goods and thus have a right or legitimate interest in such domain names in some situations.²

Outlined in the *Oki Data*³ case, the following cumulative requirements must be satisfied for the respondent to make a bona fide offering of goods and services:

- “(i) the respondent must actually be offering the goods or services at issue;
 - (ii) the respondent must use the site to sell only the trademarked goods or services;
 - (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder;
- and
- (iv) the respondent must not try to corner the market in domain names that reflect the trademark.”⁴

In this case, the Respondent’s use of the disputed domain name does not satisfy requirements of such bona fide offering of goods and services. The Respondent is using the disputed domain name to direct to a website in Persian that is offering for sale in Iran purportedly the Complainant’s IQOS Systems, competing third-party products and third-party accessories. The website at the disputed domain name suggests affiliation between the Complainant and the Respondent because it displays the Complainant’s IQOS, HEETS, ILUMA and other trademarks and the Complainant’s photographs of its products. The website at the disputed domain name does not accurately and prominently disclose lack of relationship between the Respondent’s and the Complainant claiming that it belongs to “the main representative” of IQOS and HEETS products in Iran.

²Section 2.8.1, [WIPO Overview 3.0](#).

³ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

⁴ *Id.*

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.

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 notes that the Respondent registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to 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. See Policy, paragraph 4(b)(iv).

Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, [...] (vi) absence of any conceivable good faith use". [WIPO Overview 3.0](#), section 3.1.4.

Given the renown of the Complainant's IQOS mark, the claim that "IQOS LAND" is the "main representative" authorized to sell the Complainant's products in Iran and the Respondent's sale of purported IQOS Systems, the Respondent could not plausibly assert that he was not aware of the Complainant's rights in the IQOS mark at the time of the disputed domain name registration. Instead, it is likely that the Respondent registered the Dispute domain name to trade on the goodwill of the Complainant's trademark.

Furthermore, the website at the disputed domain name is designed to look like a website of an official or authorized reseller of the Complainant's products in Iran, even though the Complainant's products are not sold in that market. The Respondent's website prominently displays the Complainant's HEETS and IQOS trademarks and the Complainant's photographs of its products. The Respondent is using the Complainant's IQOS trademark together with the word "land" all over the website at the disputed domain name. Based on the above, the Panel concludes that the Respondent registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to 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. Such use is in bad faith.

Finally, the Panel finds that the Respondent has registered the disputed domain name in order to prevent the Complainant from reflecting its trademark in a corresponding domain name and he has engaged in a pattern of such conduct 4(b) (ii). The evidence shows that the Respondent was a respondent in two different domain name cases, in which he was engaged in bad faith registration and use of domain names that included the Complainant's IQOS trademark.

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 <xxxxxxxxxiqosxlandxxxxxxxx.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: June 17, 2024