

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Hassan Chahine
Case No. D2024-1369

1. The Parties

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

The Respondent is Hassan Chahine, Lebanon.

2. The Domain Name and Registrar

The disputed domain name <iqostereailmadubai.online> is registered with GoDaddy.com, LLC (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 2, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 amended Complaint on April 8, 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 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Respondent sent an email communication to the Center on April 8, 2024.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on May 8, 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, part of the Philip Morris International Inc., group, produces tobacco and smoke-free products. The Complainant has been prominent in the tobacco industry since at least as early as 1972 and its products are sold in about 180 countries.

The Complainant's IQOS system comprises a battery-electric heating device that produces a nicotine-containing aerosol by heating special tobacco sticks, which are sold under the brand names "HEETS", "HEATSTICKS", and "TEREA".

The Complainant holds numerous registered trademarks for its various products of which the following examples are pertinent in this instance:

IQOS, word mark, United Arab Emirates Trademark, Registration No. 211139, registered on March 16, 2016;

TEREA, word mark, International Trademark, Registration No. 1765887, registered on October 19, 2023;

ILUMA, word mark, International Trademark, Registration No. 1764390, registered on October 12, 2023.

The Respondent has not provided any background information except for the contact details presented to the Registrar when registering the disputed domain name on November 13, 2023. The disputed domain name resolved at the time of the Complaint to a website (the "Respondent's website") selling a variety of tobacco stick heating devices and related products, some of them bearing or described with the Complainant's trademarks and some being of other manufacturers. The Respondent's website further promotes the Respondent through social media.

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 comprises the Complainant's registered trademarks IQOS, TEREА, and a misspelt but phonetically similar variant of the Complainant's trademark ILUMA as "ilima", followed by the place name "dubai", being a city in the United Arab Emirates ("UAE"). The disputed domain name should be found to be confusingly similar to the Complainant's trademarks. The content of the website to which the disputed domain name has resolved should support a finding of confusing similarity between the disputed domain name and the Complainant's trademarks.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that it has not permitted the Respondent to use any of its trademarks, or variants thereof, in any way. The Respondent does not meet the requirements needed in order to qualify for possible consideration as a reseller under the Policy, and in particular, the Respondent's website is offering for sale items described as being the Complainant's products together with several products of the Complainant's competitors. The Respondent's use in the disputed domain name of the Complainant's trademarks unfairly suggests an affiliation with the Complainant. The attribution of the Respondent's website to "Dubai IQOS Terra Life" incorporates the Complainant's trademark and wrongly

implies an affiliation with the Complainant. The disputed domain name is not making a bona fide offering of goods or services under the Policy and is not in use for a legitimate or noncommercial purpose. The Complainant says there is no evidence the Respondent has been commonly known by the disputed domain name or a similar name.

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

The Complainant says that its trademarks IQOS, TEREА, and ILUMA are invented terms and could not have been created by the Respondent coincidentally. The disputed domain name has been in use by the Respondent since immediately after its registration, for the purpose of purporting to offer the Complainant's products for commercial sale and was therefore evidently registered and is being used in order to mislead Internet users by causing confusion between the Respondent and the Complainant.

B. Respondent

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

The email sent to the Center on April 8, 2024, was from the email address disclosed by the Registrar for the Respondent, but stated that it was only the provider for the website and that it would take down the website.

6. Discussion and Findings

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 trademarks 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 entireties of the marks IQOS and TEREА are reproduced within the disputed domain name. In the context, the Panel finds the element "ilima" of the disputed domain name to be recognizable as a misspelling of the Complainant's trademark ILUMA. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9

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

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 is satisfied that, on the evidence, the disputed domain name has resolved to a website upon which the Respondent has made repeated use of the Complainant's trademarks and has offered for sale goods portrayed as being those of the Complainant, without any authority to do so, together with goods of the Complainant's competitors. This activity cannot be considered a bona fide offering of goods under the Policy and is not a noncommercial or fair use of the disputed domain name. The Respondent has offered no evidence of having been known by the disputed domain name or any similar name.

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.

Paragraph 4(b)(iv) of the Policy, which is applicable in this instance, reads as follows:

"by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

The Panel has examined the screen captures of the Respondent's website produced in evidence. The website has several pages, the first of which in the screen capture provided has colour photographs showing categories of products accompanied by respective trademarks including IQOS, TERE, ILUMA, and HEETS; for example, "TERE 16 products". A similar style of photograph depicts apparently competing products under the name "VAPE".

Successive pages display the products on sale in more detail, priced in UAE currency. The Complainant has identified many such images on the Respondent's website that it says have been copied from the Complainant's website without authorization. The Respondent's website has a prominent statement evidently designed to reassure potential customers that the Respondent is an authorized source of the Complainant's products, which the Complainant states is not the case. An "About us" page commences: "Dubai IQOS Terra Life specialize in selling IQOS devices and related products [...] Dubai IQOS Terra Life committed to maintaining the highest level of professionalism. Our dedication to customer satisfaction and our focus on providing premium products and services distinguish us as a trusted partner in the IQOS market".

The content of the Respondent's website, the goods offered for sale, the style, and particularly the explicit statements about the Respondent being "a trusted partner in the IQOS market", leave the Panel in little doubt that the Respondent was fully aware of the Complainant, its business and its trademarks when registering and using the disputed domain name. On the evidence, the Panel finds that the Respondent has intentionally registered and is intentionally using the disputed domain name in order to establish an online shop for the commercial sale of products bearing the Complainant's trademarks together with competing

products, and has incorporated in the disputed domain name three terms identical to or confusingly similar to the Complainant's trademarks in order to mislead visitors by confusion into believing, at least initially, that the website belonged to or was endorsed by the Complainant.

The Panel finds on the evidence and on the balance of probabilities that the disputed domain name was registered and is being used by the Respondent in bad faith under paragraphs 4(b)(iv) and 4(a)(iii) of the Policy. 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 <iqostereailmadubai.online> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: May 22, 2024