

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Tommy Wong
Case No. D2024-2346

1. The Parties

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

The Respondent is Tommy Wong, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <iqos-terea.com> is registered with Instra Corporation Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 25, 2024.

The Respondent sent an email communication to the Center on June 25, 2024. On July 3, 2024, the Center acknowledged safe receipt of it, indicating that the Amended Complaint was under compliance of formal requirements; that once the administrative proceeding has been notified, the Respondent will have the opportunity to submit its Response.

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 July 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2024. The Respondent did not submit any formal Response,

despite the opportunity offered by the Center. Accordingly, the Center commenced the panel appointment process on July 30, 2024.

The Center appointed María Alejandra López García as the sole panelist in this matter on August 9, 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 part of the group of companies affiliated to Philip Morris International Inc. ("PMI"), an international tobacco company with presence across 180 countries, specialized in the selling of tobacco and smoke-free products.

The Complainant develops Reduced Risks Products ("RRPs") which have the potential to present less risk of harm to smokers; among such innovated products, the Complainant developed a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks are inserted. There are a number of different IQOS products, registered under different trademarks as, e.g.: IQOS, IQOS ILUMA PRIME, HEETS, TERA, TERA FOR IQOS ILUMA.

By the time of this Decision, the IQOS System is available in key cities in around 71 markets across the world, where Hong Kong, China, is not currently included, and it has around 19.1 million consumers worldwide. The IQOS device and sticks are almost exclusively distributed through official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant owns several registered trademarks across multiple jurisdictions, including among many others, the following ones:

- International trademark for IQOS (word mark), Reg. No. 1218246 registered on July 10, 2014, in International Classes ("ICs") 9, 11 and 34; and in force until July 10, 2034.
- International trademark for TERA (word mark), Reg. No. 1765887 registered on October 19, 2023, in IC 34; and in force until October 19, 2033.
- International trademark for HEETS (word mark), Reg. No. 1326410 registered on July 19, 2016, in ICs 9, 11 and 34; and in force until July 19, 2026.

The disputed domain name was registered on May 24, 2024, and resolves to an online shop directed to Hong Kong, China, purportedly selling, and offering the Complainant's products commercialized under the IQOS Trademarks without any authorization, as well as competing third party products.

According with the submitted evidence, on June 25, 2024, the Respondent sent an email to the Center, in English language. The Respondent is apparently an individual located in Hong Kong, China. The Respondent has no past or present relationship, or of any kind with the Complainant. The Respondent is not known or in any way related to the Complainant or any PMI affiliate and is not authorized to use the IQOS and TERA trademarks.

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.

In relation to the first element of the Policy, in summary, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks IQOS and TEREА, which are reproduced on its entirety.

In relation to the second element of the Policy, in summary, the Complainant contends that the Respondent lacks any right or legitimate interest in the disputed domain name, given that the Respondent has no authorization, not even as a distributor or reseller of the Complainant's IQOS System, and/or to use any of the Complainant's trademarks, including as a domain name; that considering the use of the disputed domain name as an online shop website to offer and sell the Complainant's IQOS System's products, including third party products of other commercial origin, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor it is using it in connection with a bona fide offering of goods or services as set out in paragraph 4(c)(i) and 4(c)(iii) of the Policy; and that the Respondent's use of the disputed domain name does not meet the Oki Data Test requirements.

In relation to the third element of the Policy, in summary, the Complainant contends that given the use of the disputed domain name, the content of its website, the direct association of the terms IQOS and TEREА with the Complainant's tobacco business specifically for electronic cigarettes, that it is evident that the Respondent knew about the Complainant's business and trademarks, showing that it has been registered and is being used in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions, despite the fair opportunity provided by the Center.

On June 25, 2024, the Respondent sent an email to the Center, under the following words:

"What is this for? someone compliant this domain? or compliant the contact information?"

Given the stage of the proceeding, on July 3, 2024, the Center acknowledged safe receipt of the Respondent's email, in accordance with paragraph 2 paragraph 2(h)(iii) of the Rules, indicating that the Complaint was under compliance review of formal requirements, and that once the administrative proceeding has been notified, the Respondent will have the opportunity to submit its Response.

However, the Respondent did not provide any Response and/or further communication. Accordingly, on July 30, 2024, the Center commenced the panel appointment process.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must satisfy each of the three following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

In order to prevail, the Complainant must prove each of those requirements. No Response has been submitted by the Respondent as set out in paragraph 5(b) of the Rules, despite the opportunity given by the Center to present its case. Therefore, this Panel shall analyze the evidence submitted by the Complainant, including the Respondent's email of June 25, 2024, and decide this dispute on that basis.

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 IQOS and TEREА trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's trademarks, being IQOS and TEREА are 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.

As for the applicable generic Top-Level Domain ("gTLD") ".com", it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark, as it is a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

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, who chose to send the email of June 25, 2024, 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.

Given the absolute lack of relationship between the Parties, the use of the disputed domain name, for an online shop website, to offer and sell the Complainant's sophisticated products, including third-party ones from potential Complainant's competitors, this Panel agrees with the Complainant and finds that certainly the *Okі Data* requirements were not met (see *Philip Morris Products S.A. v. La Thien Nhi, Thien Nhi*, WIPO Case No. [D2024-1878](#)), and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name nor is using it in connection with a bona fide offering of goods or services as set out in paragraph 4(c)(i) and 4(c)(iii) of the Policy.

Additionally, panels have held that the use of a domain name for illegal activity – here, found as sale of (potential) counterfeit goods, 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.

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.

Given the submitted evidence, and independent research, the Panel notes that previous panels have found the Complainant's IQOS trademark enjoys significant recognition across multiple jurisdictions, i.e.: *Philip Morris Products S.A. v. □ □ □ (fang wen xiang)*, WIPO Case No. [D2024-1971](#); *Philip Morris Products S.A. v. Nguyen Tat Thanh*, WIPO Case No. [D2024-1913](#); *Philip Morris Products S.A. v. Kaloyan Donkov*, WIPO Case [D2023-4623](#), a finding that this Panel confirms to this case as well.

Therefore, given the nature of the disputed domain name, the online shop website based on recognized Complainant's trademarks as IQOS, TEREА, and even others, used without any kind of authorization and/or limitation, and the lack of Response; to this Panel such facts are suffice to conclude that the Respondent was well aware about the Complainant's business and trademarks value at the time of the registration of the disputed domain name, and that its use, falls inevitably into paragraph 4(b)(iv) of the Policy. Also see [WIPO Overview 3.0](#), section 3.2.1 and 3.2.2.

Additionally, panels have held that the use of a domain name for illegal activity – here, found as sale of (potential) counterfeit goods, impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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

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 <iqos-terea.com> be transferred to the Complainant.

/María Alejandra López García/

María Alejandra López García

Sole Panelist

Date: August 23, 2024