

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. zai tian fei long
Case No. D2024-3228

1. The Parties

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

Respondent is zai tian fei long, China.

2. The Domain Name and Registrar

The disputed domain name <iqos-jpshop-fly.com> is registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 6, 2024. On August 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to Complainant on August 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 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 Respondent of the Complaint, and the proceedings commenced on August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 10, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on September 16, 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

A. Complainant

Complainant, Philip Morris Products S.A, is a company incorporated in Neuchâtel, Switzerland. It is part of a group of companies affiliated with Philip Morris International Inc. ("PMI"). PMI is a leading international tobacco company, which has business in approximately 180 countries.

Complainant has innovated, developed, and sold a number of products, including smoke-free products. One of such products is branded as IQOS, a controlled heating device into which specially designed tobacco products under the trademarks HEETS and HEATSTICKS are inserted and heated to generate a flavourful nicotine-containing aerosol.

Complainant has exclusive rights in the IQOS and IQOS related marks. Complainant is the exclusive owner of numerous IQOS trademarks worldwide, including the Chinese trademark registered on May 14, 2016 (the Chinese Trademark registration number 16314286), the Chinese trademark registered on May 7, 2021 (the Chinese Trademark registration number 49264074), and the International trademark registered on July 10, 2014 (the Trademark registration number 1218246).

B. Respondent

Respondent is zai tian fei long, China.

The disputed domain name <iqos-jpshop-fly.com> was registered on July 5, 2024. According to the Complaint and the evidence provided by Complainant, the disputed domain name resolved to a website purporting to be an authorized online store for Complainant's IQOS products. The website is currently inactive.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's IQOS trademark. The disputed domain name incorporates the IQOS trademark in its entirety. The mere addition of a non-distinctive geographical abbreviation for Japan (i.e., "jp") and descriptive words "shop" and "fly" does not provide adequate distinction to negate the conclusion that the disputed domain name is confusingly similar to the trademark IQOS.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name.

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

Complainant requests that the disputed domain name be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

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 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.

Based on the available record, the Panel finds 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 Complainant's 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.

While the addition of other characters, "-", a non-distinctive geographical abbreviation for Japan (i.e. "jp"), descriptive words "shop", "-", and "fly", may bear on the assessment of the second and third elements, the Panel finds the addition of such characters 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.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often impossible 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. 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 record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

More specifically:

(i) there has been no evidence adduced to show that Respondent used the disputed domain name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the term "iqos", the distinctive part of Complainant's IQOS trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the IQOS trademark or to apply for or use any domain name incorporating the IQOS marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain

name in July 5, 2024, after the IQOS mark was registered in China (since 2016). The disputed domain name is confusingly similar to Complainant's IQOS marks; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolved to a website purporting to be an authorised online store for Complainant's products. The website contained content copied from Complainant's official website and purported to offer Complainant's goods for sale. It seems likely that Respondent was making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

Panels have held that the use of a domain name for illegal activity (i.e., impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 Respondent has registered and used the disputed domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on the information provided by Complainant, the Panel finds that Complainant has a reputation in the IQOS marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain name (in July 2024). This is reinforced by the fact that the disputed domain name incorporates the distinctive part of Complainant's IQOS trademark, "iqos", entirely, and that the Complainant's trademark is used on the website of the disputed domain name.

Respondent has used the website resolved by the disputed domain name for displaying the contents copied from the original website of Complainant, purports to offer Complainant's goods for sale, and prominently displays Complainant's IQOS mark.

Thus, the Panel concludes that Respondent is using a confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

UDRP panels have held that the use of a domain name for illegal activity (i.e., impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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-jpshop-fly.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: October 16, 2024