

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Daniel Ming, Vansbet
Case No. D2024-4323

1. The Parties

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

The Respondent is Daniel Ming, Vansbet, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <iqos28.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 21, 2024. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 21, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 22, 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 October 24, 2024.

On October 24, 2024, the proceeding was suspended upon the Parties’ request and reinstated on November 6, 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 November 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2024.

The Center appointed Meera Chature Sankhari as the sole panelist in this matter on December 4, 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 Philip Morris Products S.A. 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. PMI's brand portfolio contains brands like MARLBORO (outside of the United States and Canada), the world's number one international selling cigarette brand since 1972.

In time, the Complainant's business transformed from combustible cigarettes to Reduced Risk Products ("RRP"), PMI has developed a number of RRP products. One of these RRPs 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", "DELIA", "LEVIA" or "TEREA" are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the "IQOS System").

The Complainant owns a large portfolio of trademark registrations including the International Registration covering multiple jurisdictions including for the mark "IQOS", and other variations in different jurisdictions. In Indonesia, the Panel has confirmed, they own registrations bearing No. 1461017 for "IQOS" (device) dated January 18, 2019, and No. 1557546 for "IQOS" (device) dated August 27, 2020.

The disputed domain name was registered on August 21, 2024. The disputed domain name <iqos28.store> is linked to an online shop, that is allegedly selling and offering the Complainant's IQOS System.

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.

The disputed domain name identically adopts the Complainant's IQOS trademarks.

Notably, the Complainant contends that the disputed domain name is confusingly similar to that of the Complainant's Trademark as it reproduces the IQOS trademark in its entirety, in addition to the nondistinctive numerals "28" in the disputed domain name and, therefore, is likely to be associated with the respective trademark. Complainant further states that it is a well-established principle that the generic Top-Level Domain ("gTLD") is not to be considered while determining confusing similarity under the first element.

The disputed domain name links to an online shop at "www.iqos28.store", which is allegedly selling the Complainant's IQOS System. The website, presented in English and listing its location as "Jakarta", targets Indonesia, where the IQOS System is not officially sold. The website appearing on the disputed domain name was prominently using the Complainant's registered "IQOS" trademark and displaying the Complainant's official product images without the authorization of the Complainant, as was illustrated by the Complainant in the Complaint.

The disputed domain name uses the Complainant's IQOS trademark alongside the numerals "28," creating the false impression of being an official retailer. It prominently displays the IQOS trademark, uses the Complainant's product images without authorization, and includes a misleading copyright notice thereby

claiming ownership thereof, further implying affiliation. The disputed domain name provides no information about its operator and fails to acknowledge the Complainant as the legitimate brand owner, leaving users with a false impression of legitimacy.

The Complainant also claims that the Respondent has no rights and legitimate interests with respect to the disputed domain name and states that they have not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS trademark. The Respondent is not making legitimate noncommercial or fair use of the disputed domain name. The Complainant further states that the Respondent's behavior shows a clear intent to obtain unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant.

The Complainant alleges that the disputed domain name in itself suggests at least an affiliation with the Complainant and its IQOS trademark, as the domain name wholly reproduces the Complainant's registered trademark IQOS together with the non-distinctive numerals "28".

The Complainant has further alleged that the disputed domain name has been registered by the Respondent in bad faith. The trademark IQOS is purely an imaginative term and unique to the Complainant. The term "IQOS" is not commonly used to refer to tobacco products or electronic devices. It is therefore beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name, without the intention of invoking a misleading association with the Complainant.

The Complainant states that by reproducing the Complainant's registered trademark in the disputed domain name and the title of the website, the Respondent is clearly suggesting to any internet user visiting the website, that the Complainant (or an affiliated dealer of the Complainant) is the source of the website, which it is not.

B. Respondent

The Respondent did not reply to the Complainant's contentions. On October 22, 2024, the Respondent asked about the procedure and stated that it was willing to cooperate. On October 23, 2024, the Respondent asked if it needed to take down the domain name. No further communications were received from the Respondent.

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

The entirety of the mark is 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.

Although the addition of other terms, as in this case the numeric "28", may bear on assessment of the second and third elements, the Panel finds the addition of such term or a numeric as in this case, 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.

Panels have held that the use of a domain name for sale of counterfeit goods, unauthorized account, passing off can never confer rights or legitimate interests on a Respondent. [WIPO Overview 3.0](#), section 2.13.1.

In this instance, the Respondent’s use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale of its IQOS System in the territory of Indonesia, and the on-line shop provided under the disputed domain name creates the false impression that the Complainant has officially introduced the IQOS System into the Indonesian market. This false impression is amplified in circumstances where the website clearly and prominently makes the following false statement at the top of the website stating: “Provider IQOS Electric smoke online - Bring it to the next step.”

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 has registered and used the disputed domain name with the intention to gain commercial and attract internet users to the website by creating a likelihood of confusion with the Complainant’s registered trademark “IQOS”, as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. The website is further using the Complainant’s official product images without the Complainant’s authorization, while at the same time providing a copyright notice at the bottom of the website claiming copyright in the material presented on the website and thereby strengthening the false impression of an affiliation with the Complainant.

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.

Panels have held that the use of a domain name for misleading claims of association and passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, 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 <iqos28.store> be transferred to the Complainant

/Meera Chature Sankhari/

Meera Chature Sankhari

Sole Panelist

Date: December 18, 2024