

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. homn mohmoodi
Case No. D2022-4158

1. The Parties

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

The Respondent is homn mohmoodi, Denmark.

2. The Domain Name and Registrar

The disputed domain name <iqoshealth.com> is registered with CSL Computer Service Langenbach GmbH d/b/a Joker.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 3, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 5, 2022, 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 November 7, 2022.

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 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 7, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on December 12, 2022. 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 an international tobacco and smoke-free products company, with products sold in more than 180 countries. PMI produces and sells a controlled heating, smoke-free device under its IQOS mark into which specially designed tobacco products under the brand name HEETS, amongst others, are inserted and heated to generate a flavorful nicotine-containing aerosol. IQOS products were first launched in 2014 and are available in 71 markets across the world. The Complainant's IQOS marks have been recognized as being well known by prior UDRP panels.

The Complainant owns a large portfolio of IQOS related trademarks. Among them, but by no means limited to, are the following trademark registrations:

- International Registration IQOS (word) No. 1218246 registered on July 10, 2014, designating several countries;
- Russian Federation Registration for  (device) No. 776648 registered September 28, 2020.

The disputed domain name was registered on August 15, 2022. At the time of filing the Complaint, the disputed domain name resolved to a website which further used the Complainant's trademark and logo, and a number of the Complainant's product images without the Complainant's authorization, and purportedly offered for sale Complainant's products.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the IQOS trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

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

The Complaint states that the Complainant's IQOS system is not currently sold in Iran (Islamic Republic of). Notwithstanding the website is clearly purporting to be an official online retailer of the Complainant's IQOS system in Iran by using the Complainant's IQOS trademark in the disputed domain name together with the non-distinctive and descriptive word "health". The inclusion of the word "health" in the disputed domain name itself conveys a message of purported health effects of the Complainant's IQOS system, which not only has regulatory implications but also has the potential to damage the Complainant's registered trademarks.

In addition, the disputed domain name is prominently using the Complainant's registered IQOS trademark and contains false and misleading statement about the Complainant products.

Finally, on the website associated with the disputed domain name, the Respondent further promotes an Instagram page using a handle which also includes the Complainant's registered IQOS trademark. This Instagram page not only uses the Complainant's IQOS trademark in its handle but also uses the registered

IQOS trademark and logo without authorization. The website is further using a number of the Complainant's official product images without the Complainant's authorization, which strengthens the false impression of an affiliation with the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The Complainant holds several valid trademark registrations for IQOS.

The disputed domain name contains the trademark IQOS of the Complainant in its entirety with the addition of the term "health". Since the trademark IQOS of the Complainant is included in the disputed domain name, this is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademark. The addition of the other term does not prevent a finding of confusing similarity under the first element.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

There is no evidence of the existence of any of those rights or legitimate interests in this case.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name.

Moreover, the Complainant has provided evidence showing that at the time of filing of the Complaint, the disputed domain name resolved to a website which further used the Complainant's trademark and logo, and a number of the Complainant's product images without the Complainant's authorization, and purportedly offered for sale the Complainant's products. Further, the website does not appear to have accurately and prominently disclose the lack of relationship between the Respondent and the Complainant. It is the view of the Panel, this use of the disputed domain name by the Respondent does not qualify as a *bona fide* offering of products or services.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has thereby shifted the burden to the Respondent to produce evidence to rebut this presumption. The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

There is no doubt that the Respondent was aware of the Complainant's trademark when it registered the disputed domain name given that the website reproduced of the Complainant's trademark and logo, and purportedly offered the Complainant's products for sale.

With respect to use in bad faith, the Complainant has asserted that at the time of filing of the Complaint, the disputed domain name resolved to a website which further used the Complainant's trademark and logo, and a number of the Complainant's product images without the Complainant's authorization, and purportedly offered the Complainant's products for sale. It is the view of the Panel, this is evidence of bad faith.

In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and services and products offered on it under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith and has satisfied the third limb of the Policy, under paragraphs 4(a)(iii) and 4(b)(iv).

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 <iqoshealth.com>be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: December 30, 2022