

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Han Jin Hee
Case No. D2022-4159

1. The Parties

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

The Respondent is Han Jin Hee, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <yariqos.com> is registered with Gabia, Inc. (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 8, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On November 14, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On the same day, the Complainant requested for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in both English and Korean, and the proceedings commenced on November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Moonchul Chang as the sole panelist in this matter on December 24, 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 is Philip Morris Products S.A., a company which is part of the group Philip Morris International Inc. The Complainant is a leading international tobacco and reduced risk products company which sells its products in approximately 180 countries.

The Complainant is the owner of the IQOS trademark in numerous jurisdictions, including the Republic of Korea (Korean Trademark Registration No. 4012496060000 for the word mark IQOS, registered on April 28, 2017). IQOS is a tobacco heating system developed by the Complainant, which is one of the reduced risk products.

The disputed domain name was registered on May 10, 2022. According to evidence submitted by the Complainant, the disputed domain name has resolved to a website at “www.yariqos.com” which is linked to an online shop selling and offering third party competing tobacco products of other commercial origin.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

(a) The disputed domain name <yariqos.com> is identical or confusingly similar to the Complainant’s trademark IQOS.

(b) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized the Respondent to use its IQOS trademarks or to register a domain name incorporating its IQOS trademark. Further, the Respondent is neither making a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name. The Respondent’s website sells competing heated tobacco products and accessories of other commercial origin.

(c) The Respondent registered and had used the disputed domain name in bad faith. First, because the term IQOS is unique to the Complainant and not commonly used to refer to tobacco products, it is evident that the Respondent knew of the Complainant’s trademark at the time of registering the disputed domain name. Second, the Respondent registered and has used the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark. Third, the Respondent is using the Complainant’s IQOS trademark for the purpose of offering for sale third party products of other commercial origin. Such abusive use of the Complainant’s trademark for purposes of promoting competing products constitutes clear evidence of the Respondent’s bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

According to paragraph 11 of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement unless the Panel determines otherwise or otherwise agreed to by the Parties. In this present case, the Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Korean. However, the Complaint was filed in English.

The Complainant requests that the language of proceeding be English for the following reasons.

First, the language of the Registration Agreement appears to be available in English. Second, the disputed domain name is in Latin script, which indicates that the website provided under the disputed domain name is directed to, at least an English-speaking public. Third, the Respondent's website under the disputed domain name also includes a number of English words and phrases, suggesting the Respondent understands English. The above supports that the Respondent is capable of communicating in English and English is a common language in global business.

Here, the Panel observes that the Center, for its part, has communicated with the Parties in a bilingual manner in both English and Korean concerning all of the various steps and requirements thus far in the administrative proceeding. However, the Respondent has not responded to the issue of the language of the proceeding. The spirit of paragraph 11 of the Rules is to ensure fairness in the selection of the language of the proceeding by giving full consideration, *inter alia*, to the Parties' level of comfort with each language, expenses to be incurred, and possibility of delay in the proceeding in the event translations are required and other relevant factors. In consideration of the above circumstances and in the interest of fairness to both parties, the Panel concludes, in view of all of the above, that it accepts the Complaint in English, and that it will render this Decision in English.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark or service mark; 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 disputed domain name includes the Complainant's trademark IQOS in its entirety together with addition of a non-distinctive term "yar". The Panel's assessment of identity or confusing similarity involves a straightforward comparison between the disputed domain name and the textual components of the relevant mark. Adding such term does not prevent a finding of confusing similarity and does not change the overall impression of the disputed domain name as being confusingly similar to the Complainant's trademark. (Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Numerous UDRP panels have held that where a domain name incorporates a complainant's trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, it is sufficient to consider the domain name "confusingly similar" to that mark within the meaning of the Policy. (Section 1.7 of [WIPO Overview 3.0](#)). In addition, the generic Top-Level Domain ("gTLD") ".com" is disregarded under the confusing similarity test. (Section 1.11.1, [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of [WIPO Overview 3.0](#)).

First, the Complainant contends that it has never authorized or licensed the Respondent to use the Complainant's trademark IQOS or to register any domain names incorporating it and that the Respondent has used the Complainant's trademark without permission of the Complainant. On the other hand, the Respondent did not reply to the Complaint.

Second, the Complainant contends that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent has used the disputed domain name to operate the website for the purpose of offering for sale third party products of other commercial origin. In the meantime, the Respondent failed to come forward with any appropriate allegations or evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Third, there is no evidence presented to the Panel that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or fair use of the disputed domain name. In addition, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

In the consideration of the above circumstances the Panel finds that the Complainant has made out a *prima facie* case and the Respondent failed to come forward with any appropriate evidence that might rebut the Complainant's *prima facie* case.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". Hence, the Complainant must establish both bad faith registration and bad faith use of the disputed domain name. In addition, the circumstances listed in paragraph 4(b) of the Policy are not exclusive, and other circumstances may likewise lead to a finding of bad faith registration and use.

First, the Complainant obtained the registration of Korean trademark IQOS much earlier than the Respondent registered the disputed domain name in 2022. Having considered that the Complainant's trademark IQOS is unique to tobacco products it is highly likely that the Respondent has been aware of the Complainant's trademark IQOS when registering a confusingly similar domain name that fully incorporates the Complainant's mark plus the term "yar". Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. (Section 3.1 of the [WIPO Overview 3.0](#)). Thus, it is considered bad faith registration that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant's trademark so as to create a false association or affiliation with the Complainant.

Next, the Panel notes that the Respondent has used the disputed domain name to link to an online-shop selling and offering competing third party products of other commercial origin. Having considered the distinctiveness of the Complainant's mark IQOS and the failure of the Respondent to submit a response or to

provide any evidence of a *bona fide* use, the Panel finds the Respondent's bad faith use of the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

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 <yariqos.com> be transferred to the Complainant.

/Moonchul Chang/

Moonchul Chang

Sole Panelist

Date: January 7, 2023