Asian Domain Name Dispute Resolution Centre

ADNDRC Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	**HK-1801064**
Complainant:	**Philip Morris Products S.A.**
Respondent:	**CHI MING LEUNG**
Disputed Domain Name(s):	**<iqoslife.com>**

1. The Parties and Contested Domain Name

The Complainant is Philip Morris Products S.A., of QUAI JEANRENAUD 3, 2000 NEUCHATEL, SWITZERLAND.

The Respondent is CHI MING LEUNG, of FLAT F, 23/F., Tower 16, OCEAN SHORES, TKO, HK.

The domain name at issue is <iqoslife.com>, registered by Respondent with GODADDY.COM, LLC.

2. Procedural History

On 24th January 2018, the Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") and chose to have the dispute considered and decided by a single-member panel in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On 25th January 2018, the Centre, by way of email, sent a request to the Registrar of the Disputed Domain Name, **GODADDY.COM LLC ("the Registrar")**, at UDRPdosputes@godaddy.com, for verification in connection with the Disputed Domain Names. On the same day, the Registrar verified the following:-

(i) They are the registrar of the Disputed Domain Name.
(ii) The registrant of the Disputed Domain Name is the Respondent CHI MING LEUNG.
(iii) The creation date of the Disputed Domain Name is 1st March 2017;
(iv) The Disputed Domain Name status is as follows:
- Client Updated Prohibited

- Client Renew Prohibited
- Client Delete Prohibited

On 26th January 2018, the Centre, by way of email, sent a Notification of Deficiencies of the Complainant and requested the Complainant to update the information of the Respondent according to Paragraph 4 of the Rules.

On 29th January 2018, the Complainant, by way of email, submitted a revised Submission in complied with the Notification of Deficiencies of the Complainant.

On 30th January 2018, the Centre issued a Written Notice of Complaint (both in Chinese and English) to the Respondent informing the Respondent that the proceedings officially commenced and requested the Respondent to submit a Response (in Form R and its Annexures, if any) within 20 days (i.e. on or before 19th February 2018) and forwarded the Complaint and its Attachments to the Respondent.

On 20th February 2018, the Centre issued a Notification of Respondent in Default and confirmed that the Respondent did not submit a Response with the Centre, within the required time limit.

On 23rd February 2018, the Centre appointed Dr. Lewis Luk JP as the sole panelist for this case. The Panel considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence.

On 7th March 2018, the panelist issued the Administrative Panel Order No. 1 ("**the Panel Order**") requesting the Complainant to submit further statement or document in support of its allegation that "the Respondent has set up and was operating a website associated with the Disputed Domain Name, heavily featuring the IQOS trademarks, as well as copyright-protected materials created by and belonging to the Complainant and its affiliates, in an unauthorized, infringing and misleading manner" ("**the Supplemental Documents**") on or before 27th March 2018 and the Respondent to file and submit his reply on or before 17th April 2018. The date for delivery of Panel's decision be adjourned to 8th May 2018.

On 22nd March 2018, the Complainant submitted Supplemental Documents pursuant to the Panel Order. The Respondent did not file any reply to the Supplemental Documents.

3. Factual background

The Complainant

The Complainant is a company that is part of the group of companies affiliated with and wholly owned by Philip Morris International Inc. (jointly referred to as "PMI"). PMI is one of the world's leading international tobacco companies, with products sold in more than 180 countries. PMI's unequaled brand portfolio contains brands such as MARLBORO, the world's number one selling cigarette brand since 1972.

PMI is known for innovating across its brand portfolio. Over the past decade, PMI has been researching and developing a new portfolio of smoke-free products which it calls Reduced Risk Products ("RRP's"). One of these smoke-free products developed and sold by PMI is

IQOS. The IQOS system consists of an electronically-controlled heating device called the IQOS Holder, into which a specially designed and manufactured tobacco stick, marketed under the brand names "HEETS" and "HeatSticks," is inserted and heated to generate a flavorful nicotine-containing tobacco vapor. The IQOS system also consists of an IQOS Pocket Charger, specially designed to charge the IQOS Holder. IQOS was first launched by PMI in Nagoya, Japan in 2014. IQOS is available in key cities in around 30 markets across the world. To date, the IQOS product has been exclusively distributed through the PMI's official IQOS stores and websites.

The Complainant is the owner of the IQOS trademarks worldwide and this extensive portfolio includes a variety of different trademark registrations and active applications. Most notably, The Complainant also owns a portfolio of registered trademarks in China, Hong Kong and Taiwan, including but not limited to the following:

China

Trademark	Appl. No./ Reg. No.	Class
IQOS	15098769	11
iQOS	15098772	11
iQOS	16314287	34
IQOS	16314286	34
	16314289	34

Hong Kong

Trademark	Reg. No.	Class(es)
iQOS	302983591	9, 11, 34
IQOS	302983609	9, 11, 34
IQOS	303857905	9, 11, 34
IQOS	303969802	35
IQOS	304214484	14; 18; 25; 35
	303821878	9, 11, 34

Trademark	Reg. No.	Class(es)
	303927150	9, 34

Taiwan

Trademark	Registration Number	Classes (Goods / services)
IQOS	01845937	9, 11 and 34
iQOS	01718978	9 and 34
IQOS	01718976	9 and 34

(collectively "**IQOS Trademarks**").

The Respondent

The Respondent registered the Disputed Domain Name on 1st March 2017.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i. ***The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights***

The Complainant views the Disputed Domain Name to be identical to its IQOS Trademarks as it contains the Complainant's IQOS Trademarks in its entirety. The mere addition of the word "life" in the Disputed Domain Name does not avoid the likelihood of confusion caused to the public as "life" could suggest a new lifestyle choice created by the innovative "IQOS" product developed and marketed by the Complainant.

The Complainant adduced evidence in support of its assertion that IQOS as a brand has acquired substantial fame and recognition in Hong Kong which demonstrated a high degree of actual public (e.g., consumer, industry, media) recognition, forming a solid corresponding relationship with the Complainant. The Complainant and its IQOS Trademarks enjoy a widespread reputation with regard to its IQOS products. Therefore, when the public encounters the Disputed Domain Name, it is very likely that they will wrongly consider the

main part of the Disputed Domain Name "iqos" as having its origin in the Complainant's series of registered IQOS Trademarks. Hence, the public will likely conclude that the website associated with the Disputed Domain Name actually belongs to the Complainant or at the very least, is closely connected with or authorized by the Complainant. The Disputed Domain Name will create the misapprehension that the Respondent is authorized by the Complainant to offer its products or services via the Disputed Domain Name, which will result in public confusion.

ii. ***The Respondent has no rights or legitimate interests in respect of the domain name***

The Complainant confirms that the Respondent is not duly authorized by the Complainant to use any of the IQOS Trademarks and that the Respondent does not have any legitimate interest in the Disputed Domain Name.

The Complainant also alleged that the Disputed Domain Name is being used by the Respondent in connection with an information page that features an introduction to the IQOS device and an offer to the visitors to contact the site owner as to how to buy the IQOS products. The Complainant further confirms that the Respondent was not licensed or authorized use any of its IQOS Trademarks or to register a domain name incorporating its IQOS trademark or to sell any of its IQOS products. These facts show that the Respondent's use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services. Further, it also shows that there is no legitimate noncommercial or fair use of the Disputed Domain Name being made, and it is clear that it was registered for the sole purpose of trading off of the Complainant's products in a commercial manner.

iii. ***The Disputed Domain Names(s) has/have been registered and is/are being used in bad faith***

The Complainant submitted that the Respondent registered the Disputed Domain Name as a part of a broad and wide-ranging scheme to associate itself with the Complainant and its IQOS products (which are being sold by the Respondent without the Complainant's authorization). It is also suggested by the Complainant that such scheme was intended to mislead relevant consumers and obtain an improper benefit by taking advantage of the Complainant's existing brand awareness and high reputation amongst those consumers in the Complainant's registered "IQOS" Trademarks

The Complainant also submitted that the Respondent has also set up and until recently was operating a website associated with that Disputed Domain Name, heavily featuring the IQOS Trademarks, as well as copyright-protected materials created by and belonging to the Complainant and its affiliates, in an unauthorized, infringing and misleading manner. The Complainant submitted Supplemental Documents to prove the Respondent's unauthorized use of the image and IQOS Trademark on his website.

B. Respondent

The Respondent did not submit a Response.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
ii. Respondent has no rights or legitimate interests in respect of the domain name; and
iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Panel finds the Complainant owns the trademarks of IQOS duly registered in China, Hong Kong and Taiwan. The registrations are all valid and effective. The Panel finds that the Disputed Domain Name, which contains the IQOS Trademarks in its entirety, to be identical to its IQOS Trademarks. The Panel also agrees that the word "life" inserted in the Disputed Domain Name does not change the overall impression of the Disputed Domain Name. Therefore the Panel finds that the Disputed Domain Name is identical to the Complainant's IQOS Trademarks and it is very likely to cause confusion to the public. The Complainant has fulfilled the first condition.

B) Rights and Legitimate Interests

The Panel accepts the confirmation by the Complainant that it has no connection with the Respondent, nor has licensed or authorized the Respondent to use the Complainant's IQOS Trademarks in its Disputed Domain Name or to sell any of the Complainant's IQOS products. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has fulfilled the second condition.

C) Bad Faith

The Panel finds that the Respondent has registered the Disputed Domain Name in bad faith. The conduct of the Respondent, offering to sell the Complainant's IQOS products (without authorization by the Complainant) on a website constitutes an infringement of the Complainant's intellectual property rights, inclusive of the IQOS Trademarks. The Panel finds that the Respondent is taking unfair advantage of the goodwill and reputation associated with the Complainant's IQOS Trademarks and other IP rights, and intentionally attempting to mislead consumers into believing that the Disputed Domain Name, the websites associated with it, and/or its business are licensed by, have an association with or are otherwise endorsed by the Complainant.

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith. The Complainant has fulfilled the third condition.

6. Decision

The Panel orders that the Disputed Domain Name <iqoslife.com> be transferred to the Complainant.

Panelist: Dr. Lewis Luk JP

Dated: 7th May 2018