



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801076
Complainant:	Philip Morris Products S.A.
Respondent:	shenzhenshibosenchengshi litishengtaikejiyouxiangongsi
Disputed Domain Name(s):	<iqos88.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 shenzhenshibosenchengshi litishengtaikejiyouxiangongsi of guangdongsheng, Shenzhen, Guangdong, 518000, China.

The domain name at issue is <iqos88.com>, registered by Respondent with GoDaddy.com, LLC.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on February 28, 2018, 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 February 28, 2018, the Hong Kong Office sent an email to GoDaddy.com, LLC (the Registrar of the disputed domain name) requesting verification in connection with the relevant information of the disputed domain name.

On the same date, the Hong Kong Office confirmed receipt of the Complaint.

On February 28, 2018, the Registrar of the disputed domain name confirmed that the Respondent is shenzhenshibosenchengshi litishengtaikejiyouxiangongsi and the disputed domain name is registered with GoDaddy.com, LLC.

On March 2, 2018, the Hong Kong Office served a written notice of Complaint to the Respondent. The due date for submission of a response by the Respondent was March 22, 2018.

On March 23, 2018, the Hong Kong Office confirmed that it did not receive a Response from the Respondent in respect of the Complaint concerning the disputed domain name within the required period.

On March 29, 2018, the Hong Kong Office appointed Ms Francine Tan as the sole Panelist for this domain name dispute.

3. Factual background

The Complainant is a part of the group of companies affiliated with Philip Morris International Inc. (jointly referred to as “PMI”). PMI is one of the world’s leading international tobacco companies known for brands such as MARLBORO.

PMI has over the last decade researched and developed a range of smoke-free products, one of which is IQOS. The IQOS products were first launched by PMI in Nagoya, Japan in 2014. Today, the IQOS products are available in major cities across the world. The Complainant states that as a result of extensive sales, investments, and marketing efforts, the IQOS range of products have achieved considerable international success and reputation. Under 5 million adult smokers have switched to using IQOS products worldwide. To date, IQOS products have been distributed exclusively through PMI’s official IQOS stores and websites.

The Complainant is the owner of the IQOS trade marks worldwide, including in China.

The disputed domain name resolves to a website which offers for sale what are supposed to be the Complainant’s IQOS products. The disputed domain name was registered on October 19, 2017.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical with or confusingly similar to the Complainant’s IQOS trade mark. It contains the Complainant’s IQOS trade mark in its entirety.
- ii. The number “88” is a commonly-known lucky number in Chinese society; the addition of this number in the disputed domain name does not avoid the fact that the disputed domain name is likely to cause confusion to the public.
- iii. A simple keyword search on Baidu for “IQOS” shows that most of the results on the first three pages are directly related to the Complainant.
- iv. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not authorised by the Complainant to use its IQOS trade mark
- v. The disputed domain name is being used in connection with a website that offers for sale what are purportedly the Complainant’s IQOS products. The Complainant

- has not licensed or authorized the Respondent to register a domain name incorporating the IQOS the trade mark, or even to sell its products.
- vi. The Respondent's website misleadingly presents itself as an official IQOS website in China which is authorized by the Complainant.
 - vii. There is no legitimate non-commercial or fair use of the disputed domain name.
 - viii. The disputed domain name has been registered and is being used in bad faith. The Respondent has sought to mislead consumers in order for the Respondent to gain an improper benefit by taking advantage of the Complainant's extensive brand reputation.
 - ix. Copyright-protected material belonging to the Complainant and its affiliates have been used by the Respondent on its website without the Complainant's consent. The registered trade marks of the Complainant have also been displayed on the Respondent's website.

B. Respondent

The Respondent did not file any 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 Complainant has established it has trademark rights in IQOS. The next question to be addressed is whether the addition of the numeral "88" in the disputed domain name is sufficient to remove the confusing similarity with the Complainant's IQOS trade mark. The Panel agrees with the Complainant that it is insufficient. The principle which has been well established in numerous UDRP domain name decisions is that "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". See paragraph 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition.

The trade mark IQOS is clearly identifiable within the disputed domain name and the addition of the numeral "88" does not remove the confusing similarity the Complainant's trade mark. In fact, as rightly pointed out by the Complainant, the numeral has a good significance in Chinese culture and appeals to Chinese consumers looking for IQOS products of the Complainant. The Respondent's intention by using the combination of the Complainant's trade mark and the numeral 88 can be said to be to lure and attract such consumers.

Accordingly, the Complainant has proven the element required by the Policy, Paragraph 4(a)(i).

B) Rights and Legitimate Interests

The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant did not authorize the Respondent to use the IQOS trade mark or to register the disputed domain name. There is no evidence that the Respondent has been known by the name “IQOS”, or that there have been demonstrable preparations by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services.

In the Panel’s view, it would be rather difficult for the Respondent to be able to assert any right or legitimate interest in the disputed domain name when one considers the fame of the Complainant’s IQOS trade mark. It is rather inconceivable that the Respondent, being on the face of it Chinese and located in China, would have been able, by pure coincidence, to devise the term “iqos” without reference to the Complainant. On the contrary, the Respondent’s webpage shows clear familiarity on the Respondent’s part with the Complainant and its IQOS trade mark and products, and a deliberate attempt to pass off its website as a legitimate website duly authorised or endorsed by the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has proven the element required by Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Panel concludes from the circumstances of this case that the disputed domain name was registered and is being used in bad faith. The word IQOS is not a word which one can reasonably expect the Respondent to have devised on its own, without reference to the Complainant, under the circumstances of this case. In any case, it is obvious that the Respondent was well-acquainted with the Complainant’s IQOS trade mark and products. Apart from the Respondent’s silence in this proceeding, its apparent copying and reproducing of copyright-protected and/or proprietary material belonging to the Complainant are also strongly indicative of bad faith. The circumstances of this case may be described as follows, per paragraph 4(b)(iv) of the Policy:

“by using the domain name, the [R]espondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the [C]omplainant’s mark as to the source, sponsorship, affiliation, or endorsement of the [R]espondent’s website or location or of a product or service on the [R]espondent’s website or location”.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has proven the element required by Paragraph 4(a)(iii) of the Policy.

6. 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 <iqos88.com> be transferred to the Complainant.

Francine Tan
Panelist

Dated: April 15, 2018