



**URS | DETERMINATION**  
(URS Procedure 9, URS Rules 13)

**URS DISPUTE NO. 06C0AC75**

Determination DEFAULT

**I. PARTIES**

Complainant(s): PHILIP MORRIS PRODUCTS S.A. (CH)  
Complainant(s)'s authorized representative(s): D.M. KISCH INC. (SA)

Respondent(s): PRIVACY PROTECTION, HOSTING UKRAINE LLC (UA)

**II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR**

Domain Name(s): IQOSDONETSK.SHOP  
Registry Operator: GMO Registry, Inc.  
Registrar: Hosting Ukraine LLC

**III. PROCEDURAL HISTORY**

Complaint submitted: 2022-04-14 10:41  
Lock of the domain name(s): 2022-04-15 11:55  
Notice of Complaint: 2022-04-19 19:39  
Default Date: 2022-05-04 00:00  
Notice of Default: 2022-05-04 18:01  
Panel Appointed: 2022-05-04 18:28  
Default Determination issued: 2022-05-09 13:32

**IV. EXAMINER**

Examiner's Name: Mariia Koval

The Examiner certifies that she has acted independently and impartially and to the best of her knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

**V. RELIEF SOUGHT**

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

**VI. STANDARD OF REVIEW**

Clear and convincing evidence.

**VII. DISCUSSIONS AND FINDINGS**

## **A. Complainant:**

The Complainant, being a company incorporated in Switzerland, is a part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to "PMI"). PMI is one of the world's leading international tobacco companies, operating on more than 180 markets. PMI has developed the IQOS (the "IQOS Products"), which is a precisely controlled heating device into which specially designed tobacco products are inserted. PMI launched its products in 2014. Today due to extensive international sales, in accordance with local laws, the IQOS Products are sold in around 71 markets.

The Complainant is the owner of the Swiss trademark registration "IQOS" No. 660918, registered on July 7, 2014, in classes 9, 11 and 34.

The Complainant asserts that the disputed domain name identically adopts the Complainant's registered trademark "IQOS" together with a merely generic supplement.

The Complainant further asserts that the Respondent has no legitimate right or interest to the disputed domain name and that the disputed domain name was registered and is being used in bad faith.

The Complainant also contends that the disputed domain name is used for a website advertising and selling the Complainant's IQOS Products. The website is imitating the Complainant, by prominently using the Complainant's trademark "IQOS" in the disputed domain name and at the top of the website, where internet users usually expect to find the name of the online shop or website owner. The website also uses the Complainant's copyright protected product images and official marketing materials. The website reveals no information regarding the identity of the website provider, nor does it acknowledge the Complainant as the real brand owner. This leaves internet users under the false impression that the website is owned by the Complainant or one of its official licensees.

The Complainant also claims that the Respondent and the website provided under the disputed domain name are not in any way affiliated to the Complainant nor has the Complainant authorized the Respondent's registration and use of the disputed domain name. By registering the disputed domain name comprising of the Complainant's trademark "IQOS" and prominently using the Complainant's trademark "IQOS" and copyright protected marketing material on the website, the Respondent is attempting to attract the Internet users looking for the Complainant's goods, and purposefully misleading users as to the source of the website. By using the Complainant's trademark "IQOS" in the disputed domain name and hiding the identity of the website provider, the Respondent is purposefully misleading users as to the source, sponsorship, or endorsement of the offerings under the disputed domain name. Such use of the trademark "IQOS" by the Respondent while it conceals its identity, does not constitute a "bona fide offering" pursuant to the "OKI Data Principles" and unquestionably demonstrates bad faith.

The Respondent is intentionally using the Complainant's trademark "IQOS" to confuse and attract customers to its website. By registering the disputed domain name, which wholly adopts the Complainant's trademark "IQOS" and falsely suggests an affiliation with the Complainant, it is clear that the Respondent is illegitimately and directly targeting the Complainant.

## **B. Respondent:**

The Respondent did not submit a Response to the Complaint.



### **C. Procedural findings:**

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4.

In accordance with URS Rules Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

### **D. Findings of fact:**

The registration date of the disputed domain name is 24 December 2020.

The Complainant owns a large portfolio of the trademark “IQOS” registrations around the world, including Ukraine, in particular, but not limited to:

- International trademark registration “IQOS” No. 1218246, registered on July 10, 2014, in class 35;
- Swiss trademark registration “IQOS” No. 660918, registered on July 7, 2014, in classes 9, 11 and 34.

The Complainant operates a number of domain names containing its trademark “IQOS” for promotion of its goods, among which are <iqos.com>, <iqos.us>, <iqos.com.ua>, and many others.

At the date of this Determination, the website under the disputed domain name is active and directs to the website in the Russian language where sale and repair services for IQOS Products are proposed.

### **E. Reasoning:**

According to Paragraph 13 of the URS Rules, the Examiner shall make a Determination of a Complaint in accordance with the URS Procedure, the URS Rules and any rules and principles of law that it deems applicable.

Even despite the Respondent has defaulted, URS Procedure 1.2.6 requires the Complainant to make a prima facie case, proven by clear and convincing evidence.

For the Complainant to succeed, it must establish that each of the three following conditions under 1.2.6 URS Procedure are satisfied:

- That the disputed domain name is identical or confusingly similar to a word mark;
- That the Registrant has no legitimate right or interest to the disputed domain name;
- That the disputed domain name was registered and is being used in bad faith.

#### **1. The domain name(s) is(are) identical or confusingly similar to a word mark**

Under the Paragraph 1.2.6.1 of the URS Procedure, the Complainants shall prove “*that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use*”.

The Complainant contends that the dispute domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use. The Complainant has provided sufficient evidence to prove its existing ownership to the registered trademark “IQOS”.

The disputed domain name incorporates the Trademark “IQOS”.

In the present case the disputed domain name incorporates the Complainant’s trademark “IQOS” in its entirety with addition of name of the Ukrainian city “donetsk”, combined with the TLD suffix “.shop”. Addition of the name of the city “donetsk” to the Complainant’s trademark and TLD “.shop” should not impact the finding of identity and/or similarity.

Therefore, the Examiner finds that the disputed domain name is confusingly similar to the Complainant’s trademark and consequently the Examiner finds that requirement set forth under Paragraph 1.2.6.1. of the URS Procedure has been satisfied.

## **2. Respondent has no rights or legitimate interests to the domain name(s)**

To satisfy URS 1.2.6.2, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the domain name(s), and the burden of proof then shifts to the Respondent to show it does have rights or legitimate interests.

The Complainant asserts that the Respondent has no legitimate right or interest to the disputed domain name, providing evidence in confirmation of this assertion.

The Respondent, in the absence of any response, has not shown any facts or elements to justify rights or legitimate interests in the disputed domain name.

According to the Complaint, the Respondent and the website under the disputed domain name are not in any way affiliated to the Complainant nor has the Complainant authorized the Respondent’s registration and use of the disputed domain name.

The Respondent, which has no link of any nature with the Complainant, does not seem to have legitimate interests or rights in the registration and in the use of the disputed domain name. The website under the disputed domain name contains the Complainant’s registered trademark “IQOS”, a number of the Complainant’s official IQOS Product images and marketing materials without the Complainant’s authorization. At the same time the website does not contain disclosure of any connection between the Respondent and the Complainant.

Based on the above, the Examiner finds that the Respondent lacks rights or legitimate interests with respect to the disputed domain names as per the requirements set forth under Paragraph 1.2.5.2 of the URS Procedure.

## **3. The domain name(s) was(were) registered and is(are) being used in bad faith**

According to URS Procedure 1.2.6.3, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. URS Procedure 1.2.6.3 identifies non-exclusive list of circumstances that Examiner could consider as constituting bad faith.

The Respondent registered the disputed domain name years after the registration and use of the Complainant’s Trademark “IQOS”. In consideration of the reputation achieved by this trademark, it is clear that the Respondent was very well aware of the Complainant’s trademark when he registered the disputed domain name. Moreover, the Respondent appears



to have attempted to benefit commercially from the appropriation of the trademark “IQOS” in the disputed domain name. The use made by Respondent of the trademark “IQOS”, which is well-known, clearly indicates that the disputed domain name was chosen by the Respondent to take advantage of the reputation of the Complainant’s trademark. This finding leads to the obvious conclusion that the disputed domain name has been registered in bad faith.

Moreover, as seen above, the disputed domain name is being used in connection with an online shop and repair services of the Complainant’s IQOS Products. The website under the disputed domain name reproduces the Complainant’s products, logo and official marketing materials what indicates undoubtful prior knowledge of the Complainant and its famous Trademark “IQOS”. The Internet users might have well been under the impression that it is a website created and operated by a certified service provider of the Complainant that is not true.

Such use in this Examiner’s point of view has already created actual confusion with the Complainant’s trademark as to source, sponsorship, affiliation, or endorsement of the Respondent’s website and therefore does not qualify as a bona fide use, but on the contrary, this is a clear bad faith use of the disputed domain name.

Finally, the Respondent, not participating in these proceedings, has failed to indicate any facts and/or evidence, which would show the good faith registration and use of the disputed domain name.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.3 as the Respondent registered the Disputed Domain Name and is using it in bad faith.

#### **4. Abusive Complaint**

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods.

### **VIII. DETERMINATION**

#### A. Demonstration of URS elements

Demonstrated

#### B. Complaint and remedy

Complaint: Accepts

Domain Name(s): IQOSDONETSK.SHOP Suspends for the balance of the registration period

#### C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

#### D. Publication

Publication: Publish the Determination

## **SIGNATURE**

Name: Mariia

Surname: Koval

Date: 2022-05-09