



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

URS DISPUTE NO. 195D087F

Determination DEFAULT

I. PARTIES

Complainant(s): Philip Morris Products S.A. (CH)
Complainant's authorized representative: D.M. KISCH INC. (SA)

Respondent(s): Ali Ahrabi, KimiaNovin (IR)

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

Domain Name(s): IQOS.GIFT
Registry Operator: DotGift, LLC
Registrar: Atak Domain Bilgi Teknolojileri A.Ş

III. PROCEDURAL HISTORY

Complaint submitted: 2022-12-07 07:41
Lock of the domain name(s): 2022-12-09 06:01
Notice of Complaint: 2022-12-11 19:04
Default Date: 2022-12-26 00:00
Notice of Default: 2022-12-26 10:33
Panel Appointed: 2022-12-26 10:37
Default Determination issued: 2022-12-27 05:14

IV. EXAMINER

Examiner's Name: Igor Motsnyi

The Examiner certifies that he has acted independently and impartially and to the best of his 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:

1. The Complainant is an international tobacco company with products sold in over 180 markets worldwide. IQOS, an innovative reduced risk tobacco device, was launched in Japan, in 2014. The IQOS product is currently sold in around 71 markets.
The Complainant owns numerous trademark registrations for the distinctive trademarks “IQOS” and “HEETS”, covering numerous jurisdictions, including the Swiss Registration “IQOS” (word) No. 660918 and the “IQOS” trademark is registered with the Trademark Clearinghouse (TMCH). The disputed domain name is registered on April 5th, 2022.
The disputed domain name is used for a website advertising and selling the Complainant's IQOS products.
The Complainant claims that the website by the disputed domain name pretends to be an official site associated with the Complainant by prominently using the Complainant's “IQOS” trademark in the domain name and at the top of the website.
The website 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 a false impression that the website is owned by the Complainant or one of its official licensees.
The disputed domain name identically adopts Complainant's registered trademark “IQOS” together with a merely generic gTLD.
2. The Complainant contends the Respondent has no rights or legitimate interests in the disputed domain name.
The Respondent and the website under the disputed domain name are not in any way affiliated to the Complainant nor has the Complainant authorized Respondent's registration and use of the disputed domain name.
3. By registering the disputed domain name comprising of the Complainant's “IQOS” trademark and prominently using the Complainant's IQOS trademark and copyright protected materials on the website, the Respondent is attempting to attract internet users looking for Complainant's goods, and purposefully misleading users as to the source of the website. By using the Complainant's “IQOS” trademark 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 “IQOS” trademark by the Respondent does not constitute a "bona fide offering" pursuant to the "OKI Data” principles and demonstrates bad faith. The Respondent is intentionally using the Complainant's trademark to confuse and attract customers to its site.

By registering the disputed domain name, which wholly adopts Complainant's “IQOS” trademark and falsely suggests an affiliation with the Complainant, it is clear that the Respondent is illegitimately and directly targeting the Complainant and its trademarks.

B. Respondent:

The Respondent did not submit a Response.

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 disputed domain name was registered on April 5th, 2022.

The Complainant refers to “numerous IQOS” trademark registrations but provides the details of only the following trademark registration:

- “IQOS” (word) Swiss trademark registration No. 660918, registered on July 07th, 2014.

The Complainant provided proof of use of its word trademark – registration with the TMCH.

E. Reasoning:

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

The Complainant owns the “IQOS” Swiss word trademark and provides proof of use of its word mark. As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) *“Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing”* (see par. 1.2.1).

The disputed domain name is identical with the “IQOS” word mark since the disputed domain name has no other elements.

The .gift gTLD does not affect the perception of the disputed domain name as being connected to the Complainant’s trademark.

The Examiner finds that the requirements set forth under Paragraph 1.2.6.1. of the URS Procedure have been satisfied.

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

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests; and once such prima facie case is made, the burden shifts to the Respondent who has to demonstrate his rights or legitimate interests.

The Complainant in this dispute has made a prima facie case and the Respondent failed to respond.

The disputed domain name resolves to a website that seems to offer various Complainant’s goods for sale. Therefore, the Respondent can be potentially considered as a reseller of Complainant’s goods (even if unauthorized one).

As noted by WIPO Overview 3.0 “Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name” provided that the following conditions of the “Oki Data” (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903) test are met:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and

(iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The Respondent fails to meet, at least, condition number iii) as the website by the disputed domain name fails to disclose relationship with the Complainant. Moreover, the use of the Complainant’s copyrighted images and logos increases confusion and creates an impression of an affiliation or endorsement by the Complainant of the website by the disputed domain name.

The website fails to provide any contact details or otherwise disclose its relationship with the Complainant.

Besides, the fact that the disputed domain name is identical with the Complainant’s mark carries a high risk of implied affiliation (see par. 2.5.1 of WIPO Overview 3.0).

Based on the above, the Examiner finds that the Respondent lacks any rights or legitimate interests with respect to the disputed domain name as per the requirements set forth under Paragraph 1.2.6.2. of the URS Procedure.

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

The website by the disputed domain name seems to be an online shop offering various Complainant’s products.

The disputed domain name is identical with the Complainant’s “IQOS” word trademark. The nature of the disputed domain name (identical with the mark), the nature of its use (use in relation to Complainant’s products and use of Complainant’s images and logos on the website) indicate Respondent’s knowledge of the Complainant and its “IQOS” mark.

Lack of any contact information on the website by the disputed domain name, a high risk of implied affiliation and lack of any explanations regarding the nature of the website by the disputed domain name indicate Respondent’s intent to create confusion with the Complainant.

As noted by WIPO Overview 3.0: “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark” (see par. 3.1). The facts and evidence available in this proceeding, including screenshots of the website by the disputed domain name, indicate that the Respondent targets the Complainant and has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant’s mark by fully incorporating Complainant’s “IQOS” trademark into the disputed domain name, by using Complainant’s images and logos on its website and by conducting business activity via the website by the disputed domain name in the absence of any disclaimers or any other information disclosing relationship with the Complainant.

This conduct demonstrates bad faith registration and use under Paragraph 1.2.6.3 (d) of the URS Procedure.

Therefore, the Examiner finds that the requirements set forth under Paragraph 1.2.6.3. of the URS Procedure have been satisfied by the Complainant.

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): IQOS.GIFT Suspends for the balance of the registration period

C. Abuse of proceedings

Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Igor

Surname: Motsnyi

Date: 2022-12-27