



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

URS DISPUTE NO. 50E8EEBA

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): Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS)

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

Domain Name(s): IQOSCODES.SHOP
Registry Operator: GMO Registry, Inc.
Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2022-06-13 15:44
Lock of the domain name(s): 2022-06-22 07:15
Notice of Complaint: 2022-06-23 17:31
Default Date: 2022-07-08 00:00
Notice of Default: 2022-07-08 14:40
Panel Appointed: 2022-07-11 19:34
Default Determination issued: 2022-07-13 14:21

IV. EXAMINER

Examiner's Name: Rodolfo Carlos Rivas Rea

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:

The domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration, which is currently in use.

The domain name identically adopts the Complainant's registered trademark "IQOS" together with a merely generic supplement (URS Rule 1.2.6.1).

The Complainant owns numerous trademark registrations for the distinctive trademarks "IQOS", covering numerous jurisdictions, including Swiss Registration "IQOS" (word) No. 660918. The "IQOS" trademark is registered with the Trademark Clearinghouse, which is sufficient to prove the actual use of the trademark (URS Rule 8.1.2.1).

The Respondent has no legitimate right or interest to the domain name.

The Respondent and the website provided under the domain name are not affiliated with the Complainant, nor has the Complainant authorized the Respondent's registration and use of the domain name (URS Rule 1.2.6.2).

Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name.

The domain name was registered to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct.

The domain name was registered primarily to disrupt the business of a competitor.

By using the domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

By registering a domain name comprising the Complainant's "IQOS" trademark and prominently using the Complainant's "IQOS" trademark on the website, the Respondent is attempting to attract Internet users looking for the Complainant's goods and purposefully misleading users as to the source of the website.

By using the Complainant's "IQOS" trademark in the 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 domain name.

Such use of the "IQOS" trademark 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 intentionally uses the Complainant's "IQOS" trademark to confuse and attract customers to its site.

Furthermore, misuse of personal information derived from the Respondent's phishing activity is likely to taint or tarnish the Complainant's "IQOS" trademark.



By registering the disputed domain name, which wholly adopts the 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 (URS Rule 1.2.6.3).

The domain name is used for a website allegedly offering codes for the Complainant's IQOS products under the pretext of obtaining personal details from Internet users / relevant consumers. The website imitates the Complainant by prominently using Complainant's IQOS trademark 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 reveals no information regarding the identity of the website provider, nor does it acknowledge the Complainant as the real trademark owner. This leaves Internet users under the false impression that the website is owned by the Complainant or one of its official licensees.

B. Respondent:

The Respondent did not submit a formal Response in conformity with paragraph 5 of URS Policy and Rules; consequently, MFSD sent the Notice of Default to the parties.

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 the absence of a Response, the Determination language shall be English.

D. Findings of fact:

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. Today due to extensive international sales, in accordance with local laws, the IQOS product is sold in around 71 markets.

"IQOS" is neither an ordinary dictionary word, nor generic.

The Complainant owns numerous trademark registrations for the distinctive trademark "IQOS", covering numerous jurisdictions, including Swiss Registration "IQOS" (word) No. 660918. The IQOS trademark is registered with the Trademark Clearinghouse, which is sufficient to prove the actual use of the trademark (URS Rule 8.1.2.1).

The Respondent registered the disputed domain name on 27 May 2022.

E. Reasoning:

1. The domain name is identical or confusingly similar to a wordmark

The Complainant provided evidence on record of a word mark registration for "IQOS", with the earliest registration dating from 2014. The "IQOS" branded products are sold in around 71

markets. In relation to URS Rule 8.1.2., the Complainant provides evidence that the “IQOS” trademark is registered with the Trademark Clearinghouse, satisfying the use requirements under the URS Rules.

The Examiner must now move on to analyze if the domain name is confusingly similar to the trademark at hand. In this case, the domain name indeed reproduces the totality of the word mark "IQOS", a fanciful term, as the first part of the disputed domain name and arguably the most dominant element of the domain name, being that the second element of the domain name is a generic term, namely "CODES".

The addition of the generic term “CODES” is immaterial to dispel the confusing similarity between the disputed domain name and the Complainant’s trademark, as the dominant element of the disputed domain name remains the Complainant’s trademark, namely “IQOS”.

The specific use of the generic term “CODES” may be more relevant to further analysis under the elements below.

Additionally, for the purposes of this analysis, the gTLD has little bearing in the analysis necessary for the first requirement under the URS.

Based on the above and the evidence on record, the Examiner finds that the requirements set forth under Paragraph 1.2.6 (i) of the URS have been satisfied.

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

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The Complainant asserts that it has not authorized the Respondent to use the word mark "IQOS". Furthermore, the Complainant also states that they have no business relationship. Additionally, the evidence on record shows no evidence that Respondent is commonly known by the disputed domain name.

This is enough for the Complainant to establish a *prima facie* case, as described in paragraph 2.1 of WIPO 3.0 Overview, which for this proceeding is persuasive to the Examiner.

In addition, based on the evidence, it is evident that the disputed domain name was registered primarily to disrupt the Complainant's business. The Complainant provides evidence that the disputed domain name has been used by the Respondent intentionally to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. This by offering codes (as per “CODES”, also contained in the disputed domain name) for the Complainant's IQOS products under the pretext of obtaining personal details from Internet users / relevant consumers. In addition, the website associated with the disputed domain name appears to imitate the Complainant by using Complainant's “IQOS” trademark 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.

Although this may be more relevant under the element below, these facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.



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 (ii) of the URS.

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

As per the facts mentioned under the second element above and the overall circumstances of the case, it seems to indicate, through clear and convincing evidence, that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from the appearance of legitimate association to the Complainant and confuse Internet users as to the source of sponsorship. A practice like this can never be considered a *bona fide* offering under the Policy.

These facts include the reproduction of the word mark in the disputed domain name, which is the disputed domain name's most dominant element. Additionally, in the website's content associated with the disputed domain name, the "IQOS" trademark is reproduced as per evidence on record.

Furthermore, the website associated with the disputed domain name is requesting information from the visiting Internet users, namely email addresses, in addition to specific product information the Complainant's brand "IQOS". Although no information is provided on the intended use of this information, the evidence on record is enough to conclude that Internet users visiting the website associated with the domain name can be confused as to the source of sponsorship of the domain name and are mistakenly led to believe it is associated to the Complainant.

The Examiner notes that the evidential burden for complaints under the URS is significantly higher (clear and convincing evidence) than under the UDRP (balance of probabilities); nevertheless, WIPO Overview 3.0 remains informative to this matter, since the facts and evidence on record remain consistent with the thrust of conducts described under Paragraph 1.2.6.3 of the URS.

Based on the above and the evidence on record, the Examiner finds that the disputed domain name was registered and has been used by the Respondent in bad faith, as per the requirements set forth under Paragraph 1.2.6 (ii) of the URS.

4. Abusive Complaint

The Examiner finds that the Complaint is neither abusive nor contains deliberate material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): IQOSCODES.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: Rodolfo Carlos

Surname: Rivas Rea

Date: 2022-07-13