



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1701032</b>
<b>Complainant:</b>	<b>Philip Morris Products S.A.</b> <b>(Authorized Representative: Simone Intellectual Property Services Limited)</b>
<b>Respondent:</b>	<b>LIN YU HSUAN; Yuhsuan Lin</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;IQOS123.COM&gt;; &lt;IQOSTW.COM&gt;; &lt;MYIQOS.CO&gt;</b>

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**1. The Parties and Contested Domain Names**

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

The Respondents are LIN YU HSUAN, of 16F.-11, No.110, Chenggong Rd., Sanchong Dist, New Taipei City, Taiwan China, 24141 and Yuhsuan Lin, of No.110 henggong Rd., Sanchong Dist, Taipei, Taipei 000000, TW.

The domain names at issue are IQOS123.COM, registered by Respondent LIN YU HSUAN with GOOGLE INC.; IQOSTW.COM, registered by Respondent Yuhsuan Lin with GODADDY.COM, LLC; and MYIQOS.CO, registered by Respondent Yuhsuan Lin with GODADDY.COM, INC.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC")[" Centre "] on October 19, 2017, seeking for a transfer of the domain names in dispute.

On October 20, 2017, the Centre sent an email asking for the detailed data of the registrants to the registration organizations, and the registration organizations, on October 21, 2017, responded with the detailed data checked, including checking over the registrants.

On October 24, 2017, the Centre examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules") and asked the Complainant to amend the Complaint Form to reflect the data sent by the registration organizations.

On October 25, 2017, the Complainant submitted the revised Complaint.

On October 26, 2017, the Centre examined whether the revised Complaint meets formal requirements set out in the Policy, the Rules, and the Supplemental Rules.

On October 26, 2017, the Centre sent to the Respondents the "Written Notice of Complaint" along with the Complaint via email. The Centre informed the Respondents of a due date, November 15, 2017, for the submission of the Response.

On November 16, 2017, the Centre confirmed that the Respondents didn't submit the Response Form.

On November 23, 2017, the Centre appointed Mr. Doo-Hyung Do as the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Centre, in accordance with Paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On December 7, 2017, the Panel ordered the Complainant to file additional evidence, if any, to support its arguments within five (5) business days of the order and further ordered the Respondents to file an opinion on said evidence within five (5) business days from the receipt of the above evidence; the Complainant accordingly filed additional evidence on December 14, 2017, but the Respondents failed to file any opinion until the lapse of the above period, namely by December 21, 2017.

### 3. Factual background

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

Over the past decade, PMI has been researching and developing a new line of smoke-free products called Reduced Risk Products and 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. Since IQOS was first launched by PMI in Nagoya, Japan in 2014, IQOS product, which is available in key cities in around 26 markets across the world, has been exclusively distributed through the PMI's official IQOS stores and websites.

The Complainant is the owner of the various IQOS trademarks worldwide, including the following trademarks registered in Taiwan:

Trademark	Classes (Goods / services)	Registration Number
	Class 9, 11 and 34	01845937

	Class 9 and 34	01718978
	Class 9 and 34	01718976

The disputed domain names IQOS123.COM, IQOSTW.COM and MYIQOS.CO were registered on January 24, July 15, and July 24, 2017 respectively.

#### 4. Parties' Contentions

##### A. Complainant

The Complainant's contentions may be summarized as follows:

- i. All three disputed domain names fully comprise the Complainant's IQOS trademarks in their entirety and adding descriptive or non-distinctive matter to IQOS does not guarantee avoidance of confusion. Therefore the disputed domain names IQOS123.COM, IQOSTW.COM and MYIQOS.CO are identical to the Complainant's IQOS trademarks.
- ii. The Respondents are not authorized by the Complainant to use its IQOS trademarks, so the Respondents do not have any legitimate interest in the disputed domain names.
- iii. The Respondents registered the disputed domain names in a clear attempt 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. The Respondents have also set up and until recently were operating websites associated with those disputed domain names, 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.
- iv. Accordingly, by registering and using the disputed domain names, the Respondents have unfairly taken advantage of the good will and reputation associated with the Complainant's IQOS trademarks, and intentionally attempted to mislead the consumers into believing that the disputed domain names or the products displayed on the disputed domain names are licensed by, have an association with or are otherwise endorsed by the Complainant. The Respondents also intend to exploit the commercial success and good fame of the Complainant and its IQOS trademarks to attract internet users to visit the websites to which the disputed domain names are directed to seek illegal commercial interest and benefit.

##### B. Respondent

The Respondents did not reply to the Complainant's contentions.

#### 5. Findings

The 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 main portion of the disputed domain names "IQOS123.COM", "IQOSTW.COM" and "MYIQOS.CO" is "IQOS" and given that the disputed domain names comprise the Complainant's IQOS trademarks in their entirety, the simple additions of "123", "tw" and "my" in the disputed domain names do not prevent the disputed domain names from causing confusion to the public.

On the other hand, the additions of generic top-level domain extensions such as ".COM" and ".CO" are irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Therefore, the Panel finds that the disputed domain names incorporating "IQOS" as its essential element is confusingly similar to the Complainant's registered IQOS trademarks, and that the Complainant has satisfied the first element of the Policy.

#### **B) Rights and Legitimate Interests**

The Policy provides, at Paragraph 4(c), for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- i. Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- ii. The respondent has been commonly known by the domain name; or
- iii. The respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

The Complainant has not licensed nor authorized the use of its trademarks to the Respondents or otherwise permitted the Respondents to register the disputed domain names in their names.

There is no indication that the Respondents are commonly known by the disputed domain names.

There exists no evidence to demonstrate the Respondents' intent to use or to make demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services. Conversely, by using the disputed domain names confusingly similar to the Complainant's IQOS trademarks without authorization, the Respondents have infringed the intellectual property rights of the Complainant.

Based on the Respondents' default and on the *prima facie* evidence in the Complaint, the Panel finds that there exists no circumstance demonstrating the Respondents' right or legitimate interest in the disputed domain names.

Consequently, the Panel is satisfied that the Respondents have no rights or legitimate interests in the disputed domain names, and the Complainant has proven the second element of the Policy.

### **C) Bad Faith**

The Policy states, at Paragraph 4(b), that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- i. Circumstances indicating that the respondent has registered or acquired the domain name 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 documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its 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 its website or location or of a product or service on its website or location.

The Panel has the view that the following facts and considerations must be taken into account in finding the intent of the Respondents when registering the disputed domain names:

The disputed domain names do not reflect or correspond to the Respondents' own names;

As of early October 2017, the domain "iqos123.com" automatically routed a given user to the domain "iqostw.com";

As of the date of the submission of the Complaint, notwithstanding the fact that the domain name "iqos123.com" was not in operation, both this domain name and "iqostw.com" pointed to the same website title "IQOS Fans Taiwan - IQOS 2代 Plus 相關介紹, iQOS 日本代購";

The domain "iqostw.com" leads to the Facebook page "IQOS Fans Taiwan" (<https://www.facebook.com/iqosfans/>);

On the Facebook page "IQOS 討論 代購" (<https://www.facebook.com/iQOS123/>), images with a watermark reading "IQOS123.com" can be seen;

On the Facebook page "IQOS 討論 代購", the email address [shop@iqos123.com](mailto:shop@iqos123.com) is listed as the point of contact, and this email address is also the point of contact for the website "myiqos.co", which site is currently invalid; and

The PMI has provided its products using the “IQOS” and other related trademarks since 2014, and “IQOS” has already gained well established worldwide reputation as the Complainant’s trademark and trade name when the Respondents registered the disputed domain names, namely January 24, 2017 (for IQOS123.COM), July 15, 2017 (for IQOSTW.COM) and July 24, 2017 (for MYIQOS.CO).

The above facts show that the Respondents, as a single entity, are actively controlling and using the domain names “IQOS123.COM”, “IQOSTW.COM” and “MYIQOS.CO” in connection with the Facebook Pages “IQOS 討論 代購” and “IQOS Fans Taiwan” for the purpose of commercial promotion of goods and services offered by them at their websites and/or Facebook pages.

Further, the Complainant has never authorized the Respondents to use the Complainant’s trademarks in any manner whatsoever.

In light of the foregoing facts and considerations, it is fairly reasonable to infer that the Respondents have intentionally attempted to attract, for commercial gain, internet users to their websites and/or webpages, by creating a likelihood of confusion with the Complainant’s “IQOS” trademarks as to the source of the “IQOS” products.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain names were registered and are being used in bad faith, satisfying the third element of the Policy.

## **6. Decision**

For the foregoing reasons, in accordance with the paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <IQOS123.COM>, <IQOSTW.COM> and <MYIQOS.CO> be transferred to the Complainant.

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Do, Doo-Hyung  
Sole Panelist

Date: December 26, 2017