Panel Decision for dispute CAC-ADREU-007575

Case number	CAC-ADREU-007575
Time of filing	2018-03-01 13:16:20
Domain names	iqosaccessories.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization

Respondent

Name	Tursa Karolis

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The panel is not aware of any other pending legal proceedings.

FACTUAL BACKGROUND

The Complainant is a part of the group of companies affiliated to the well-known Philip Morris International Inc. which is at least one of the leading international tobacco companies, with products sold worldwide.
The group, where the Complainant is part of, has developed and sells a smoke-free product branded IQOS. IQOS was first introduced in Japan in 2014. Today IQOS is available in key cities in around 20 markets across the world. So far the IQOS product has exclusively been distributed through the group, where the Complainant is part of.
Complainant enjoys trademark protection for IQOS in many countries in the world, inter alia in the EU on the basis of the International registration 1218246 where the EU is designated, registered on July 10, 2014.
The Respondent is a private individual residing in Vilnius, Latvia.
The disputed domain was linked to an online-shop showing the mark IQOS on the website and offering accessories for the Complainant's IQOS product including products of another origin than the Complainant.
The online shop neither showed any details regarding the provider of the website nor did it acknowledge the Complainant as the brand owner.

A. COMPLAINANT

Complainant claims that the registered disputed domain name is confusingly similar to its trademark "IQOS" and that Respondent has no rights or legitimate interests in this domain name. The Respondent is not known or in any way related to the Complainant and is not authorized to use the IQOS trademark. Furthermore, the domain name has been registered in bad faith since the disputed domain name was allegedly registered to attract Internet users, for commercial gain, to its hosting service by creating a likelihood of confusion with the Complainant's IQOS trademarks.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

According to Art 21 No. 1 of the Regulation (EC) No. 874/2004 of April 28, 2004, a registered domain name shall be subject to revocation where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

Complainant is proprietor of inter alia the International registration 1218246 IQOS where the EU is designated and which is registered on July 10, 2014.

The trademark of Complainant and the disputed domain name only differ in the additional element "accessories" which is descriptive without any own or additional distinctiveness. The addition of such a purely descriptive element does not have a relevant influence on the similarity of signs or on the distinctiveness of the main element "IQOS" which clearly carries the weight of the designation in the domain names. This is widely acknowledged (see for all Bayerische Motoren Werke AG (BMW AG) v. Jiri Svec, CAC case no. 7151, <bmw-nagivation.eu>).

The disputed domain name has been registered by the Respondent without rights or legitimate interest in the names since neither a right nor a legitimate interest in accordance with article 21 No. 2 of the Regulation (EC) No. 874/2004 of April 28, 2004 was demonstrated by the Respondent or is otherwise apparent.

The Complainant has made a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the Domain Name incorporating its IQOS trademark.

In view of the panel, there is, despite certain possible highly special circumstances which are not present here, no legitimate reason for a reseller of genuine products nor a provider of genuine or non-genuine spare parts or accessories, independently of the admissibility of their offers, to use the related trademark in the domain name itself.

There is no necessity to discuss or apply in the present case the so called Oki Data principles from WIPO Case No.D2001-0903 partly applied for also by Panels in ADR proceedings for .eu domain name disputes (for example in CAC case no. 5957 - harrypotterlego.eu) allowing use of trademarks in domain names under certain criteria, since at least some criteria of this test are clearly not met, i.e. it was not made completely clear by the Respondent who is operating the website under the disputed domain name and there were allegedly not only, if at all legitimately trademarked goods offered.

Therefore, the panel need not examine whether or not the disputed domain name has been registered or is being used in bad faith in accordance with article 21 No.1(b), No. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name IQOSACCESSORIES.EU be revoked

PANELISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2018-03-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: IQOSACCESSORIES.EU

II. Country of the Complainant: Switzerland, country of the Respondent: Latvia

III. Date of registration of the domain name: 28 September 2017

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
word trademark (international registration) registered inter alia for the European Union, reg. No. 1218246, for the term IQOS, filed on July 10, 2014, registered on July 10, 2014 in respect of goods and services in classes 9,11,34.

V. Response submitted: No.

VI. Domain name is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No.
2. Why: The Complainant has made a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the Domain Name incorporating its IQOS trademark. Panel also sees no other reason why Respondent should be entitled to use the protected right in the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
In the present case and in view of the lack of rights and legitimate interests in the disputed domain name, the panel need not examine whether or not the domain name has been registered or is being used in bad faith in accordance with article 21 No.1(b), No. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004.

IX. Other substantial facts the Panel considers relevant: No.

X. Dispute Result: Revocation of the disputed domain name.

XI. Procedural factors the Panel considers relevant: None.