1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (“the Centre”) on 5 August 2019. The Complaint was made in accordance with the CNNIC ccTLD Dispute Resolution Policy issued by CNNIC on 21 November 2014.

On 6 August 2019, the Centre transmitted by email to the Registrar a request for Registrar verification in connection of the Disputed Domain Name.

On 8 August 2019, the Registrar transmitted by email to the Centre its verification.

On 15 August 2019, the Centre issued a Notification of Deficiencies to the Complainant and the Complainant duly rectified the Complaint on the same day.

On 9 September 2019, the Centre requested the Complainant to resubmit the Complaint in accordance with the China ccTLD Dispute Resolution Policy (the "Policy"), CNNIC ccTLD Dispute Resolution Policy Rules (the “Rules”) issued by CNNIC on 18 June 2019 and HKIAC Supplemental Rules to CNNIC ccTLD Dispute Resolution Policy effective from 9 August 2019.

On 10 September 2019, the Complainant duly resubmitted the Complaint.

On 17 September 2019, the Centre sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 20 days to submit a Response (i.e. on or before 7 October 2019).

No Response was submitted to the Centre by the Respondent.

On 8 October 2019, the Centre advised both the parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the Centre.
On 21 October 2019, the Centre notified the parties that Mr. FONG Ho Yin had been appointed as a sole panelist by the Centre.

On 28 October 2019, the Panel issued an Administrative Panel Order No. 1 requiring the Complainant to file the respective earliest copy of the trademark registration certificate of “IQOS” and “VEEV” in China on or before 4 November 2019 and the Respondent to file submission in reply on or before 11 November 2019.

The Complainant filed the documents on 1 November 2019 but the Respondent did not file any submission in reply.

On 13 November 2019, the Panel issued an Administrative Panel Order No. 2 that the Decision be delivered on or before 27 November 2019.

2.  **Factual background**

   A.  Complainant

      The Complainant is a company registered in Switzerland.

   B.  Respondent

      The Respondent through the Registrar registered the Disputed Domain Name on 27 December 2018.

      The Respondent has not filed any Response to these proceedings.

3.  **Parties’ Contentions**

   A.  Complainant

      The Complainant’s contentions may be summarized as follows:

      **I. The disputed domain name is identical with or confusingly similar to the Complainant’s name or mark in which the Complainant has civil rights and interests;**

      The Complainant views the Disputed Domain Name www.iqosveev.com.cn to be identical or confusingly similar to its IQOS and VEEV Trademarks.

      First of all, there is no doubt that the Disputed Domain Name consists of the mere combination of two elements, which are the Complainant’s IQOS and VEEV trademarks. Panels in previous domain dispute resolution cases have held such domain names to identical or confusingly similar to related registered trademarks for purposes of the Policy: “Moreover, as to identity of the disputed domain name with the Complainant’s marks, the disputed domain name consists of the mere combination of two elements, which are the Complainant’s IQOS and VIVID trademarks. Accordingly, the Panel rules that the disputed domain name is identical or confusingly similar to the Complainant's trademarks, and the first element required by the Policy has been fulfilled.” (Philip Morris Products S.A. v. De Ping Wu, Shen Zhen Shi Zhi Qi Wu Lian Ke Ji You Xian Gong Si, WIPO Case No. D2018-2606).
Meanwhile, generally speaking, a user of a mark “may not avoid likely confusion by appropriating another’s entire mark and adding descriptive or non-distinctive matter to it”. (The Argento Wine Company Limited v. Argento Beijing Trading Company, WIPO Case No. D2009-0610; General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No. D2001-0087; Philip Morris Products S.A. v. Shenzhen City Jiu Yao Technology Co., Ltd., HKIAC Case No. DCN-1800827). Given that the Disputed Domain Name fully incorporates both the Complainant’s IQOS and VIVID trademarks, this conduct will just further serve to mislead the public into believing that the Disputed Domain Name is an official, authorized or endorsed website of the Complainant in China, selling the IQOS MESH and VEEV products.

In addition, a simple keyword search on Baidu for “IQOS” and “VEEV” reveals that the vast majority (if not all) of the results on the first three pages are related directly to the Complainant. This fully supports the assertion that IQOS and VEEV have acquired substantial fame and recognition in China and demonstrates that there is a high degree of actual public (e.g., relevant consumer, industry, media) recognition between the IQOS and VEEV marks and the Complainant, with a clear corresponding relationship tying the two together in the public’s view.

Furthermore, the prior fame of the “IQOS” trademarks has already been clearly recognized in previous UDRP and CNDRP decisions discussing nearly identical facts. In a UDRP decision, the panellist stated: “The Complainant submitted evidence proving the registration of the “IQOS” trademark in multiple Classes in China. Evidence submitted by the Complainant has established a definite degree of reputation for "IQOS" trademark in China.” (Philip Morris Products S.A. v. Shang Hai Ren Xu Dian Zi Shang Wu You Xian Gong Si, HKIAC Case No. 1801081). In another recent decision relating to a domain using the letters “iqos-vip,” the panelist have stated: “Upon review, the Complainant is an internationally renowned tobacco company, and the Complainant’s “IQOS” brand and trademark are very famous internationally and in China, so the Respondent should have heard of it.” (Philip Morris Products S.A. v. Shenzhen Jiu Yao Technology Co., Ltd., HKIAC Case No. 1800827).

Moreover, the Complainant and its registered IQOS and VEEV Trademarks enjoy a widespread reputation with regard to the IQOS Heating System, IQOS MESH, and VEEV products. Therefore, when the public / relevant consumers encounter the Disputed Domain Name, it is very likely that they will wrongly consider the Disputed Domain Name as having its origin in the Complainant’s series of registered IQOS and VEEV Trademarks. Hence, the public / relevant consumers will likely conclude that the website associated with the Disputed Domain Name actually belongs to the Complainant or at the very least, is closely connected with or authorized by the Complainant. The Disputed Domain Name will create the misapprehension that the Respondent is authorized by the Complainant to offer its products or services via the Disputed Domain Name, which will result in public confusion.

In conclusion, the Disputed Domain Name is confusingly similar to the registered Trademarks owned by the Complainant, which is likely to cause confusion. The Complainant’s reasoning is wholly in accord with Section 8 (1) of CNDRP.

II. Holder of the disputed domain name has no legitimate right or interest over the domain name or the major part of the domain name;
The Respondent is not authorized by the Complainant to use its IQOS or VEEV Trademarks, so the Respondent does not have any legitimate interest in the Disputed Domain Name. The Respondent has blatantly and obviously incorporated the entirety of the Complainant’s IQOS and VEEV Trademarks into the Disputed Domain Name when registering the same.

Further, the Disputed Domain Name is being used in connection with a website that offers for sale what are alleged to be the Complainant’s IQOS MESH and VEEV products. The Complainant submits that it has not licensed or otherwise authorized the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS and VEEV trademarks (let alone to sell its products). Given the aforementioned, and regardless of whether the products offered for sale on the Respondent’s website are genuine (which the Complainant does not admit), the website is prominently and misleadingly presented as an official IQOS website in China, giving the false impression that it has been authorized by the Complainant, which is not true. These facts show that the Respondent’s use of the Disputed Domain Name is not in connection with a *bona fide* offering of goods or services. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903.

The misleading nature of the Respondent’s unauthorized use of the Complainant’s registered IQOS and VEEV Trademarks is further amplified by the fact that the Complainant has not yet commercialized its IQOS MESH and VEEV products in China. The website under the Disputed Domain Name suggests to relevant consumers that the IQOS MESH and VEEV products are officially being provided by the Complainant—via the Respondent—in China, as evidenced by the “IQOS VEEV” language on the website title, and the legend at the bottom of the website associated with the Disputed Domain Name references “©版权所有 IQOS VEEV Company | PMI 技术支持” (© All Rights Reserved IQOS VEEV Company | PMI Technical Support), all of which will appear to the general public / relevant consumers as a reference to IQOS and VEEV, and thus to the Complainant itself.

Finally, the disputed domain name resolves to a website that offers for sale what is alleged to be the Complainant’s IQOS MESH and VEEV products. There is no legitimate non-commercial or fair use of the Disputed Domain Name being made here, and it was clearly registered for the sole purpose of trading off of the Complainant’s products in a commercial manner.

In conclusion, the Respondent does not have any right or legitimate interest in the Disputed Domain Name, and the Complainant’s case complies with Section 8 (2) of CNDRP.

**III. Holder of the disputed domain name registers or uses the disputed domain name in bad faith.**

The Respondent registered the Disputed Domain Name as a part of a broad and wide-ranging scheme (described in detail below) to unfairly associate itself with the Complainant and its IQOS MESH and VEEV products, as well as services related to them (services which are being provided by the Respondent without the Complainant’s authorization).
First of all, the Respondent has maliciously registered the Disputed Domain Name with the clear knowledge of the Complainant’s registered “IQOS” and “VEEV” Trademarks. As mentioned above, the Complainant's "IQOS" and “VEEV” Trademarks have achieved a high reputation and recognition amongst consumers on a global basis, including in China, through the Complainant’s long-term and extensive promotion (in accordance with local laws) and use. Given the overwhelming notoriety of the "IQOS" and “VEEV” Trademarks, the Respondent is fairly assumed to have full knowledge of the Complainant’s "IQOS" and “VEEV” Trademarks. Further, given the fact that the marks "IQOS" and “VEEV” are unique to the Complainant, the Respondent’s use of the identical uniquely coined terms “IQOS” and “VEEV” in the Disputed Domain Name simply cannot be considered a coincidence.

Secondly, it has come to the Complainant’s attention that the Respondent has also set up and has been operating a website associated with that Disputed Domain Name, on which extensive and unauthorized use of the IQOS and VEEV trademarks and copyright-protected materials created by and belonging to the Complainant and its affiliates is being made. This also unfairly rides on the Complainant’s fame and reputation and is a clear effort to create the false impression that the Respondent’s business is supported by, associated with authorized or endorsed by the Complainant – which it is not. The infringing conduct of the Respondent in that regard includes the following:

<table>
<thead>
<tr>
<th>Disputed Domain Name Website</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="https://www.iqosveev.com.cn" alt="Disputed Domain Name Website" /></td>
<td>Direct use of the Complainant’s trademarks.</td>
</tr>
<tr>
<td><img src="https://uk.iqos.com/products/what-is-iqos-mesh" alt="Disputed Domain Name Website" /></td>
<td>A direct copy of the Complainant’s marketing materials, again, materials protected by copyright. Link: <a href="https://uk.iqos.com/products/what-is-iqos-mesh">https://uk.iqos.com/products/what-is-iqos-mesh</a></td>
</tr>
</tbody>
</table>

In addition, the associated website is offering IQOS MESH, and VEEV Products for sale, which further extends the connection in the mind of the relevant consumer between the Disputed Domain Name and the Complainant’s registered IQOS and VEEV Trademarks, as evidenced below:
Accordingly, in light of the above, there is clearly no legitimate, non-commercial or fair use of the Disputed Domain Name being made by the Respondent here, and the Disputed Domain Name was clearly registered for the sole purpose of trading off the Complainant’s name, reputation, trademarks, and services related to the IQOS MESH and VEEV products. Through the Disputed Domain Name and its associated website, it is clear that the Respondent’s primary aim is to capitalize on the reputation and goodwill of the Complainant’s mark and/or to otherwise mislead Internet users / relevant consumers.

In totality, the Respondent’s misuse and abuse of the Disputed Domain Name, the act of displaying the registered trademarks of the Complainant in the Disputed Domain Name’s associated website, and the unauthorized reproduction of the Complainant’s copyright-protected works on that website, all infringe upon the Complainant’s exclusive right to use and enjoy the IQOS and VEEV Trademarks and other of its valuable associated intellectual property rights, harming the Complainant, and potentially diluting the value of the brand assets protected under relevant associated intellectual property rights.

This entire course of conduct, including registering the Disputed Domain Name and using it in conjunction with a related website that itself contains further infringing materials also makes clear that the Respondent is taking unfair advantage of the goodwill and reputation associated with the Complainant’s “IQOS” and “VEEV” Trademarks and other associated intellectual property rights, and is intentionally attempting to mislead relevant consumers into falsely believing that the Disputed Domain Name and the website associated with it, and/or the Respondent’s business are licensed by, have an association with or are otherwise endorsed by the Complainant – which is not the case.

In summary, the Respondent’s registration of the Disputed Domain Name has clearly been made in bad faith, as has its ongoing use. The Respondent is unfairly and unlawfully exploiting the commercial success and goodwill of the Complainant and its registered “IQOS” and “VEEV” Trademarks and IQOS MESH and VEEV Products to attract Internet users to visit the website to which the Disputed Domain Name is
directed. The Respondent's registration and use of the Disputed Domain Name is highly malicious and the Complainant's complaint is fully in compliance with Section 8 (3) of CNDRP.

B. Respondent

The Respondent has not submitted any Response within the stipulated timeframe. Therefore, the Respondent is in default.

4. Findings

1. The Language of the Proceedings

Article 6 of the Policy provides:

“The language of the domain name dispute resolution proceedings shall be in Chinese unless otherwise agreed by the parties or determined by the Panel.”

No agreement has been reached by the parties to use English as the language of the proceedings.

Article 31 of the Rules provides the Panel with a broad discretion for the conduct of the proceedings. However, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving disputed domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceedings: see Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd., WIPO Case No. D2008-0293; Solvay S.A. v. Hyun-Jun Shin, WIPO Case No. D2006-0593.

The Complainant has provided the Panel with the following reasons that English be the language of the proceedings:

1. The Complainant is aware that the Disputed Domain Name is made up of the words “iqos” and “veev,” and the incorporation of the English words “iqos” and “veev” suggests that the Respondent is at the very least, competent with the English language;

2. The Complainant further submits that the commission of a translator would add unnecessary costs to the Complainant, which already bears the cost of filing and will cause delay in commencement of the proceedings; such action is contrary to the drafters of the Policy intentions to provide a cost-effective and expedited resolution process. The Complainant refers the Panel to the case of Deutsche Messe AG v. Kim Hyungho WIPO Case No. D2003-0679;

3. In compelling the Complainant to translate and submit this complaint in Chinese, the Panel would not be acting in keeping with the overriding principles in Paragraph 10 of the UDRP Rules, in particular 10(b)—that the parties should be treated equally and given a fair opportunity to present their case and 10(c)—which preserves the time span of the process. This is a viewpoint supported by the following case: Equinor ASA v. Fred Wallace, WIPO Case No. D2019-0720, General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM WIPO Case No. D2006-0334.

The Respondent did not make any submissions to the language of the proceedings and did not object to the use of English as the language of the proceedings.
In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs: see *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006-0004; *Finter Bank Zurich v. Shumin Peng*, WIPO Case No. D2006-0432.

There is no evidence on record that the Respondent is proficient in the English language.

However, the Panel is mindful of the need to ensure the proceedings are conducted in a timely and cost effective manner. In particular, the Panel has to follow Article 31 of the Rules to ensure that the proceedings take place with due expedition.

In the circumstances, bearing in mind the need to conduct the proceedings in a timely and cost effective manner, and the fact the Respondent has chosen not to contest the proceedings, the Panel finds that it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceedings.

Having carefully considered all the above matters, the Panel determines under Article 6 of the Policy that English shall be the language of the proceedings.

2. Discussions and Findings

Article 8 of the Policy provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

(i) The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests;

(ii) The disputed domain name holder has no legitimate right or interest in respect of the domain name or the major part of the domain name;

(iii) The disputed domain name holder has registered or the domain name is being used in bad faith.

Article 7 of the Policy states that the Complainant and the Respondent shall bear the burden of proof for their own claims.

A) Identical / Confusingly Similar

Article 8(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests.

The Panel would only consider the “IQOS” registered trademark of the Complainant in China as the Complainant was able to produce the earliest trademark registration certificate of “IQOS” in China (Date of Registration: 21 June 2015).
As the Complainant was not able to produce the earliest trademark registration certificate of “VEEV” in China, in particular, the Complainant failed to produce an English translation of the alleged Statement of Grant of Protection when requested by the Panel. Concerning the alleged internal record of the VEEV registration submitted by the Complainant, the Panel is of the view that the official open record of trademark registration is required and the alleged internal record is not sufficient. Accordingly, the Panel would not consider the “VEEV” registered trademark of the Complainant as having civil rights and interests in China.

Based on the “IQOS” registered trademark of the Complainant in China, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s registered trademark even without considering the alleged “VEEV” registered trademark of the Complainant.

As noted, the Disputed Domain Name wholly incorporates the “IQOS” registered trademark of the Complainant.

“.com.cn” is a second level domain for China. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant’s registered trademark.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(i) of the Policy.

B) Rights and Legitimate Interests

The fact that the Complainant’s registered trademark in China (Date of Registration: 21 June 2015) predates the Respondent’s Disputed Domain Name (Date of Registration: 27 December 2018) has the practical effect of shifting the burden of proof to the Respondent in establishing that the Respondent has legitimate rights and/or interests in the Disputed Domain Name: see PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Article 7 of the Policy.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(ii) of the Policy.

C) Bad Faith

Article 9 of the Policy provides that:

“Any of the following circumstances may be the evidence of the registration and use of a domain name in bad faith:

(i) The purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits;

(ii) The disputed domain name holder, on many occasions, registers domain names in order to prevent owners of the names or marks from reflecting the names or the marks in corresponding domain names;
(iii) The disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant’s name or mark so as to mislead the public;

(iv) Other circumstances which may prove the bad faith.”

On the information before the Panel, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The Complainant has registered the “IQOS” trademark in China long before the Disputed Domain Name was registered.

2. The Complainant’s “IQOS” trademark has been registered, advertised and used widely, and have become well-known amongst the consumers globally and in China. It has been held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: see The Caravan Club v. Mrgsale, Case No. NAF/FA95314.

3. Through the Disputed Domain Name and its associated website, it is clear that the Respondent’s primary aim is to capitalize on the reputation and goodwill of the Complainant’s mark and/or to otherwise mislead Internet users / relevant consumers.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(iii) of the Policy.

5. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has proved its case against the Respondent under Article 8 of the Policy.

The Panel hereby orders that the Disputed Domain Name be transferred to the Complainant under Article 14 of the Policy.

____________________
FONG Ho Yin
Sole Panelist

Dated: 25 November 2019