

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Domain Privacy Service FBO Registrant, The Endurance International Group, Inc. / Kirill Kirill
Case No. D2022-0863

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by Boehmert & Boehmert, Germany.

The Respondent is Domain Privacy Service FBO Registrant, The Endurance International Group, Inc., United States of America (the “United States”) / Kirill Kirill, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <heats24.com> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on March 18, 2022. In response to a notification by the Center that the Complaint referred to inaccurate Registrar information, the Complainant filed an amended Complaint on March 23, 2022.

The Center verified that the Complaint together with the amendment to the Complaint and amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 21, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on May 3, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the group of tobacco companies affiliated with Philip Morris International, Inc.

Amongst other things, the group produces tobacco products branded “Heets” or “HeatSticks”, that are designed to be inserted into another of the Complainant’s products, “IQOS”, a heating device which the Complainant describes as a “Reduced Risk Product”. There are approximately 19.1 million customers using the IQOS system worldwide.

The Complainant owns a number of registered trade marks for HEETS including International Registration No. 1326410 for HEETS, registered on July 19, 2016, in classes 9, 11, and 34.

The disputed domain name was registered on June 11, 2020.

The disputed domain name was used for a website headed “Heats24.com” / “Buy IQOS Online” that purported to offer the Complainant’s IQOS and Heets products for sale, including use of unauthorised copies of the Complainant’s product images, as well as offering competing products such as “GLO” and “Neosticks”. The website offered free shipping to the United States and displayed prices in United States dollars.

The following disclaimer appeared on the home page of the website, beneath a list of the Complainant’s products: “All product and company names are trademarks or registered trademarks of their respective holders. Use of them does not imply any affiliation with or endorsement by them. “IQOS”, “Heatsticks”[,], “Heets”[,], “Duos” are registered trademarks of PMI (Philip Morris International Inc) in the United States and/ or other countries. The site is not endorsed nor affiliate with PMI (Philip Morris International Inc).”

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The disputed domain name is confusingly similar to the Complainant’s trade mark as it comprises a phonetically-identical misspelling of the Complainant’s trade mark, in addition to the term “24”, which is commonly used for websites offering products of a specific brand 24 hours a day.

The use of the Respondent’s website to target the Complainant’s trade mark confirms confusing similarity.

The Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has not authorised the Respondent to use its trade mark.

The Respondent is not making legitimate non-commercial or fair use of the disputed domain name.

Nor is the Respondent making a *bona fide* offering of goods.

The Respondent does not qualify as a legitimate reseller because its website is offering competing products. Also, the disputed domain name of itself suggests at least an affiliation with the Complainant, as does the Respondent’s website, including by use of the “heats24.com” branding and the Complainant’s official product images, as well as by the lack of information about the Respondent’s identity and the use of an inadequate disclaimer.

The disclaimer lacks prominence and does not accurately specify the Complainant's trade marks. Its effect is further weakened by the highlighting of the Complainant's trade marks in bold, compared to the long and complicated text of the remainder of the disclaimer.

The use of the website to offer for sale in the United States products that are not yet legal in the United States is a further indicator of the illegitimacy of the Respondent's use of the disputed domain name.

The Respondent's use of the Complainant's trade marks in the disputed domain name and website constitute trade mark infringement.

The disputed domain name was registered and is being used in bad faith.

The Respondent was aware of the Complainant's trade mark when registering the disputed domain name, which it has used to offer products which compete with those of the Complainant. Furthermore, the terms "heets" and "heatsticks" were coined by the Complainant and are unique to it.

The Respondent registered and used the disputed domain name with the intention of creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy, including by use of a typosquatting variation of the Complainant's trade mark in the disputed domain name as well as by the Respondent's use of its "heats24.com" branding and its unauthorised use of the Complainant's official product images.

The Respondent has also created the false impression that the Complainant is officially selling certain of its products in the United States.

Use of a privacy protection service is further evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark HEETS, as well as unregistered trade mark rights deriving from the Complainant's extensive use of that mark.

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Section 1.8 of [WIPO Overview 3.0](#) states that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the word “heats” - an obvious and phonetically-identical typosquatting variation of the Complainant’s distinctive trade mark, which remains readily recognisable within the disputed domain name - plus the additional term “24”, which does not prevent a finding of confusing similarity for reasons explained above.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent is purporting to resell the Complainant’s own goods. The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “Oki Data requirements”).

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirements to accurately and prominently disclose the Respondent’s relationship with the trade mark holder, as explained in section 6 C below. In addition, the Respondent is not using the site to sell only the trademarked goods.

Accordingly, the Panel considers that the Respondent’s use of the disputed domain name cannot be said to be *bona fide* under the Policy.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Given the Respondent’s selection of a domain name reflecting an obvious typosquatting variation of the Complainant’s distinctive mark, and the evidence of its use for a website that (1) creates the impression that it is officially associated with the Complainant including by prominent use of the Complainant’s marks as well as official product images; and (2) includes links to competing products, the Panel readily concludes that the disputed domain name was registered and is being used in bad faith by the Respondent, in accordance with paragraph 4(b)(iv) of the Policy. The Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trade mark.

In the Panel’s view, the Respondent cannot rely on the disclaimer, which is not in a prominent position and is unlikely to be seen by most users of the site. Furthermore, the disclaimer gives no information about the operator of the website. The Panel finds that the Respondent has not undertaken sufficient steps to avoid causing confusion to Internet users.

In any case, section 3.7 of the [WIPO Overview 3.0](#) explains that where, as here, the overall circumstances of a case point to a respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. Indeed, in such cases panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused. This Panel does indeed treat the disclaimer as such an admission.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <heats24.com>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: May 17, 2022