

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. 陈智佳 (chen zhi jia)  
Case No. D2022-2150

### 1. The Parties

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

The Respondent is 陈智佳 (chen zhi jia), China.

### 2. The Domain Name and Registrar

The disputed domain name <hnbheat.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 13, 2022. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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. On the following day, the Center sent an email communication to the Complainant 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 in English on June 16, 2022.

On June 16, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. On the same day, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 in English and Chinese of the Complaint, and the proceedings commenced on June 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on July 14, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on July 20, 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 markets smoke-free tobacco products, including IQOS, which consists of an electronically-controlled device into which a tobacco stick is inserted and heated to create a tobacco vapor. The Complainant markets the tobacco sticks under various brands, including HEETS and HEATSTICKS. The Complainant owns multiple trademark registrations including:

- International trademark registration number 1217386 for HEATSTICKS, registered on July 21, 2014, designating multiple jurisdictions, and specifying goods in class 34, including tobacco products;
  - International trademark registration number 1261439 for HNB, registered on December 19, 2014, designating multiple jurisdictions including China, and specifying goods in classes 9, 11, and 34, including electronic vaporizers and tobacco products;
  - International trademark registration number 1312086 for HEET, registered on May 17, 2016, designating multiple jurisdictions including China, and specifying goods in classes 9, 11, and 34, including electronic vaporizers and tobacco products;
  - International trademark registration number 1326410 for HEETS, registered on July 19, 2016, designating multiple jurisdictions including China, and specifying goods in classes 9, 11, and 34, including electronic vaporizers and tobacco products;
- International trademark registration number 1504347 for IQOS, registered on January 18, 2018, designating multiple jurisdictions including China, and specifying goods and services in multiple classes, including tobacco heating devices; and
- International trademark registration number 1461017 for IQOS in a particular script (the "IQOS logo"), registered on January 18, 2019, designating multiple jurisdictions, and specifying goods and services in classes 9 and 34, including tobacco products.

The above trademark registrations remain valid.

The Respondent is an individual resident in China.

The disputed domain name was created on May 7, 2022. It resolves to a website mostly in Chinese that promotes the Complainant's IQOS products and competing products. The website prominently displays the IQOS logo, the Complainant's product images, and a QR Code, which it invites Internet users to scan to contact the website operator.

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain name is confusingly similar to the Complainant's HEET, HEETS, HEATSTICKS, and HNB marks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent registered and used the disputed domain name with the intention to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant's HEET, HEETS, HEATSTICKS, and HNB trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product on its website.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Respondent's website uses a high number of English expressions and marketing material partly in English so it seems likely that he understands that language, while the Complainant has no knowledge of Chinese so that translation of the Complaint would imply time and costs.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and the amendment to the Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

Based on the evidence submitted, the Panel finds that the Complainant has rights in the HNB mark, the HEET mark, and the HEETS mark, among others.

The disputed domain name incorporates the HNB mark as its initial element. It also incorporates the word “heat”, which is phonetically identical to the HEET mark, and phonetically very similar to the HEETS mark (omitting only the final “s”). Given that each of these marks remains wholly, phonetically, or almost wholly phonetically, recognizable within the disputed domain name, the differences do not prevent a finding of confusing similarity between the disputed domain name and these marks. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) suffix “.com”. As a mere standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the Complainant’s marks. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website that prominently displays the Complainant’s IQOS logo and product images. The website gives the impression that it is operated or endorsed by, or affiliated with, the Complainant. However, it promotes not only the Complainant’s products but also competing products. Further, it displays no disclaimer clarifying its relationship to the Complainant, or lack thereof. The Complainant submits it has not licensed or otherwise permitted the Respondent to use HNB or any of its trademarks or to register the disputed domain name. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent’s name is “陈智佳 (chen zhi jia)”, not the disputed domain name. Nothing indicates that the Respondent is commonly known by the disputed domain name.

The Panel has taken note that “hnb” is an acronym for the phrase “heat not burn” and that “heat” is a word in that phrase. However, the combination of those two elements is not a word or common phrase that

describes the use that the Respondent is making of the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] 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] website or location or of a product or service on [the respondent's] website or location.

The disputed domain name was registered in 2022, years after the Complainant obtained its trademark registrations for HNB, HEET, and HEETS. The disputed domain name wholly incorporates the HNB mark and contains the word "heat" that is phonetically identical or very similar to the HEET and HEETS marks. While "hnb" is an acronym for "heat not burn" and "heat" is a word in that phrase, the combination so closely resembles three of the Complainant's marks that it does not appear to be a coincidence. Further, the website to which the disputed domain name resolves prominently displays the Complainant's IQOS logo and product images. In view of all these circumstances, the Panel finds that the Respondent had the Complainant and at least its HNB, HEET, and HEETS marks in mind at the time when he registered the disputed domain name.

The disputed domain name is used to attract Internet users by creating a likelihood of confusion at least with the Complainant's HNB, HEET, and HEETS marks as to the source, sponsorship, affiliation, or endorsement of the website to which it resolves. This use is intentional. The promotion of products combined with the invitation to Internet users to contact the website operator is presumably for commercial gain. Accordingly, the Panel considers that these circumstances fall within those described in paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 <hnbheat.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: July 28, 2022