

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Mehrad Ahmadi Salman, Radiosaat  
Case No. D2022-3750

### **1. The Parties**

The Complainant is Philip Morris Products S.A., Switzerland, represented by D.M. Kisch Inc., South Africa.

The Respondent is Mehrad Ahmadi Salman, Radiosaat, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <heetsplus.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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 October 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 amended Complaint on October 18, 2022.

The Center verified that the Complaint together with the 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”).  
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In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2022.

The Center appointed Stolyarenko as the sole panelist in this matter on November 22, 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 a part of the group of companies affiliated with Philip Morris International Inc. (jointly referred to as "PMI"). PMI is a leading international tobacco company, with products sold in approximately 180 countries.

PMI has a number of products including a tobacco heating system called IQOS. IQOS is a precisely controlled heating device which is used with the specially designed tobacco sticks under the brand HEETS.

The Complainant has registered a number of trademarks worldwide for HEETS, including in the United States, for goods in classes 9, 11, 34 related to the activities of the Complainant. Some of the HEETS trademark registrations are indicated below:

- International Registration for HEETS (word) No. 1326410, registered on July 19, 2016 for the goods in classes 9, 11, 34, designating the United States, among other countries;
- International Registration for HEETS and design No. 1328679, registered on July 20, 2016 for the goods in classes 9, 11, 34, designating the United States, among other countries.

The Respondent appears to be an individual located in the United States. According to the Whois, the disputed domain name was registered in the name of the Respondent on September 4, 2022. The disputed domain name resolves to a website in the Persian language offering for sale in Islamic Republic of Iran ("Iran") purported HEETS products, IQOS systems and tobacco products of the Complainant's competitors. The website provides no information about its owners. The website "www.heetsplus.com" promotes a Telegram channel under the name "heetsplus", which also uses the Complainant's HEETS and IQOS trademarks.

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

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

The Complainant contends that it has strong rights in HEETS trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world.

The Complainant alleges that the disputed domain name is identical or confusingly similar to the Complainant's HEETS trademark as it incorporates the Complainant's registered HEETS trademark entirely.

The Complainant contends that the descriptive word "plus" is insufficient to avoid finding of confusing similarity. The Complainant states that the applicable generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is viewed as a standard registration requirement, which is disregarded under the confusing similarity test.

The Respondent has no rights or legitimate interests in the disputed domain name as the HEETS trademark precede the registration of the disputed domain name for years.

The Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant's trademarks. Specifically, the Respondent is not an authorized reseller of the

Complainant and has not been authorized to register and use the disputed domain name.

The Respondent is not commonly known by the disputed domain name. The intention of the registration of the disputed domain name is to take advantage of the reputation of the HEETS trademark.

The Respondent could not be considered as a reseller involved into the “bona fide offering of goods or services” because the Respondent failed to comply with test established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In particular, the Respondent failed to accurately disclose the Respondent’s relationship with the Complainant, the Respondent sells on the website “www.heetsplus.com” third-party products and uses the Complainant’s copyrighted images without authorization.

Furthermore, the wording at the website under the disputed domain name “ایکوس با / عرضه مستقیم محصولات ایکاس “ تضمین بهترین قیمت و گارانتی محصولات “ (“Direct supply of IQOS / IQOS products with the guarantee of the best price and guarantee of the products”) clearly indicates that the Respondent falsely claims to be an authorized dealer of the Complainant.

The website “www.heetsplus.com” seems to be targeting the market of Iran, however, the Complainant at the moment does not offer for sale its products in Iran.

The Respondent registered and has been using the disputed domain name to attract the Internet users to its website for commercial gain, by causing a likelihood of confusion and association with the Complainant and its trademark HEETS.

The Respondent was well-aware of the Complainant’s HEETS brand at the time of registration of the disputed domain name and the likelihood of association with the Complainant. The name “heets” is purely an imaginative term and unique to the Complainant. This term is not commonly used to refer to tobacco products or electronic devices. Therefore, it is clear that the Respondent chose the disputed domain name in order to invoke a misleading association with the Complainant.

The Respondent registered and used the disputed domain name in bad faith.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Language of Proceeding**

According to paragraph 11(a) of the Rules “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.”

In this case, the Registrar has confirmed that the language of the Registration Agreement for the disputed domain name is English and German. The Panel also notes that the Respondent is located in the United States.

The Complainant filed the Complaint in English and requested English to be the language of this proceeding. The Panel considers that it is reasonable to proceed with the English language of the administrative proceedings as one of the languages of the Registration Agreement.

## **B. Identical or Confusingly Similar**

The Complainant has proved its rights in the HEETS mark through international registrations covering multiple countries worldwide including the United States and dating back to 2016.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having trademark rights in the HEETS mark.

The disputed domain name is comprised of two words “heets” and “plus”, and combined with the gTLD “.com”.

The Panel notes that addition of the word “plus” to the HEETS mark in the disputed domain name does not prevent a finding of confusing similarity because the Complainant’s trademark remains clearly recognizable in the disputed domain name. Such conclusion is consistent with findings of previous UDRP decisions. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

## **C. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the domain name. Once the complainant establishes a *prima facie* case against the respondent under this ground, the burden of production shifts to the respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant’s *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent’s rights or legitimate interests to the disputed domain name, and that the complainant frequently addresses to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not making a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the Complainant, the Respondent is not authorized or licensed to use the Complainant’s HEETS trademark in the disputed domain name, as well as not in any way affiliated with the Complainant. Furthermore, according to the Complainant, the disputed domain name targets the market of Iran, where the Complainant does not sell its products at all.

The Panel finds that the Respondent has used the disputed domain name and the corresponding website “www.heetsplus.com” for offering for sale the Complainant’s branded HEETS products and IQOS System along with other competing products.

The website “www.heetsplus.com” does not disclose the relationship between the Complainant and the Respondent.

The website under the disputed domain name contains the vague wording in Persian “ عرضه مستقیم محصولات ” “ایکوس با تضمین بهترین قیمت و گارانتی محصولات / آیکاس” (“Direct supply of IQOS / IQOS products with the guarantee of the best price and guarantee of the products”) that falsely suggests that the Respondent is an authorized dealer of the Complainant.

Based on the above mentioned, the Panel comes to a conclusion, that the Respondent fails to satisfy the criteria 2 and 3 of the Oki Data Test (see *Oki Data Americas, Inc. v. ASD, Inc., supra*).

Under such circumstances, the Panel concludes that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy).

Because, the Respondent clearly aims to monetize the disputed domain name by selling products on the website, the Respondent activities does not fall under the a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy).

According to the Registrar’s information, “Mehrad Ahmadi Salman” is the registrant of the disputed domain name. The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name. The Panel concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

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

As the Panel established above, the Complainant established rights into the HEETS trademark.

The Panel notes that the Complainant’s marks for HEETS were registered prior to the registration of the disputed domain name, and the Respondent, through the nature of the activities on the website under the disputed domain name was aware that such registration abuses the Complainant’s trademark rights.

The Responded failed to submit a formal response or provide any evidence of a good-faith use. Moreover, the design of the website, prominent use of the Complainant’s HEETS and IQOS trademarks on the website, use of the Complainant’s copyrighted images, absence of any disclaimers addressing lack of the relationship between the Complainant and the Respondent all suggests that the Respondent not only knew about the Complainant’s trademarks and official website, but intentionally was silent on the website under the disputed domain name so Internet users would believe that the website was associated, affiliated, sponsored or directly operated by the Complainant or the Complainant’s authorized distributor.

The word “plus” which was added by the Respondent to the Complainant’s HEETS trademark, does not make the disputed domain name unique or in any way less confusingly similar to the Complainant’s trademark. Such addition has a potential to strengthen the impression of Internet users that the disputed domain name is operated by the Complainant or the Complainant’s authorized distributor selling HEETS trademarked products “in addition” to other Complainant’s products.

The Panel finds that the Respondent’s intention has always been to use the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location (see paragraph 4(b)(iv) of the Policy).

Therefore, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <heetsplus.com> be transferred to the Complainant.

*/Oleksiy Stolyarenko/*

**Oleksiy Stolyarenko**

Sole Panelist

Date: December 12, 2022