

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. FHM Fokhruddin, amrbagan  
Case No. D2022-4730

### **1. The Parties**

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

The Respondent is FHM Fokhruddin, amrbagan, Bangladesh.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 12, 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 December 13, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Respondent did not submit a formal response, but sent an email communication to the Center on January 11, 2023, requesting an extension to file a Response. Further to paragraph 5(e) of the Rules, the Response due date is extended until January 21, 2023. On January 24, 2023, the Center informed the Parties that it will proceed to Panel Appointment.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on January 27, 2023. 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 Philip Morris Products S.A. is a company, which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI").

PMI is a leading international tobacco and smoke-free products company with products sold in more than 180 countries. PMI produces and sells a controlled heating, smoke-free device under its IQOS mark into which specially designed tobacco products under the brand name HEETS, amongst others, are inserted and heated to generate a flavorful nicotine-containing aerosol. IQOS products were first launched in 2014 and are available in 71 markets across the world. The Complainant's IQOS and MYIQOS marks have been recognized as being well known by prior UDRP panels.

The Complainant owns a large portfolio of well-known trademarks. Among them, but by no means limited to, are the following trademark registrations for HEETS:

- United Arab Emirates Registration HEETS (word) No. 256864 registered on December 25, 2017;
- United Arab Emirates Registration HEETS (word/device) No. 256867 registered on December 25, 2017.

The disputed domain name was registered on June 16, 2022. At the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System. In addition, third party accessories related to the Complainant's products were also offered for sale.

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

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

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the HEETS trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

With respect to bad faith, the Complainant specifically states that the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's IQOS System, as well as competing third party products of other commercial origin. In addition, the disputed domain name is prominently using the Complainant's registered HEETS trademark at the top of the Website, as well as using the Complainant's registered HEETS trademark within the tab interface of the Website, being locations where users / relevant consumers usually expect to find the name of the online shop and/or the name of the provider of the Website. Any user/ relevant consumer being confronted with the disputed domain name and the Website provided thereunder will usually expect to find the name of the online shop and/or the name of the provider of the Website.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent sent an email communication to the Center on January 11, 2023, requesting an extension to file a Response. The Response due date was extended until January 21, 2023 accordingly but the Respondent did not formally reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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**

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The Complainant holds several valid trademark registrations for HEETS.

The disputed domain name contains the trademarks HEETS of the Complainant in its entirety with the addition of the term "best" and the geographical term "dubai". Since the trademark HEETS of the Complainant is included in the disputed domain name, this is sufficient to establish that a domain name is confusingly similar to the Complainant's trademark. The addition of terms does not prevent a finding of confusing similarity.

The Panel finds the first element of the Policy has therefore been met.

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

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

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

There is no evidence of the existence of any of those rights or legitimate interests in this case.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name.

Moreover, the Complainant has asserted that at the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's HEETS System. In addition, third party accessories were also offered for sale. It is the view of the Panel, this use of the disputed domain name by the Respondent does not qualify as a *bona fide* offering of products or services.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption. The Respondent has failed to rebut the Complainant's *prima facie* case.

In addition, and without prejudice to the above, the composition of the disputed domain name, comprising the Complainant's HEETS trademark in its entirety in combination with two additional term including a geographical term "dubai", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1).

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

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

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

There is no doubt that the Respondent was aware of the Complainant's trademark when he registered the disputed domain name given that the website reproduced not only one but two of the Complainant's trademarks.

With respect to use in bad faith, the Complainant has asserted that at the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's HEETS System. In addition, third party accessories related to the Complainant's products were also offered for sale. It is the view of the Panel, this is evidence of bad faith.

In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and services and products offered on it under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant.

Furthermore, the failure of the Respondent to submit a formal Response or to provide any evidence of actual or contemplated good faith use and the implausibility of any good faith use to which the domain name may be put, affirm a finding of bad faith.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith and has satisfied the third limb of the Policy, under paragraphs 4(a)(iii) and 4(b)(iv).

## 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 <bestheetsdubai.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: February 10, 2023