

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Френк Папай
Case No. D2023-0893

1. The Parties

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

Respondent is Френк Папай, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <heatstoresonline.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2023. On February 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 1, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email to Complainant on March 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same date.

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 Respondent of the Complaint, and the proceedings commenced on March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 13, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on April 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 Complaint contains the following allegations:

“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 approximately 180 countries. PMI’s unequalled brand portfolio contains brands like MARLBORO, (outside of the United States and Canada) the world’s number one international selling cigarette brand since 1972.”

PMI is known for innovating across its brand portfolio. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”, which PMI defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), PMI has developed a number of RRP products. One of these RRP products developed and sold by PMI is a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names [HEETS], HEATSTICKS [...] are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the “IQOS System”). There are 5 versions of the IQOS heating device currently available: the IQOS 2.4/IQOS 2.4+ pocket charger and holder, IQOS 3 pocket charger and holder, IQOS 3 Multi device, IQOS 3 DUO/DUOS and IQOS ILUMA.

“The IQOS System was first launched by PMI in Nagoya, Japan in 2014 and has obtained an extraordinary 20% share of the market in Japan. Today the IQOS System is available in key cities in around 71 markets across the world. As a result of an investment of over USD 9 billion into the science and research of developing smoke-free products and extensive international sales (in accordance with local laws), the IQOS System has achieved considerable international success and reputation, and approximately 19.1 million relevant consumers using the IQOS System worldwide. To date, the IQOS System has been almost exclusively distributed through PMI’s official IQOS stores and websites and selected authorized distributors and retailers.”

Complainant has registered numerous trademarks for HEETS, HEET, HEATSTICKS, and IQOS, including: HEETS, International Trademark Registration No. 1326410, registered on July 19, 2016 in classes 9, 11, and 34; HEET, International Trademark Registration No. 1312086, registered on May 17, 2016 in classes 9, 11, and 34; and HEATSTICKS, International Trademark Registration No. 1217386, registered on July 21, 2014 in class 34; and IQOS, International Trademark, Reg. No. 1218246, registered on July 10, 2014 in classes 9, 11, and 34.

The Domain Name was registered on November 9, 2021. The Domain Name resolves to a website purporting to offer for sale Complainant’s IQOS System, as well as Complainant’s Heets and HeatSticks products and competing third-party products. The website frequently uses Complainant’s word and stylized trademarks MARLBORO, IQOS, HEETS, and HEATSTICKS.

Complainant’s products are shown throughout Respondent’s website. At the bottom of the web pages is what Complainant characterizes as a false copyright notice: “© 2023 heatstoreonline.com. All Rights Reserved.” According to Complainant, Respondent is trying to pass itself off as an official authorized reseller of Complainant’s products.

Respondent’s website also sells e-cigarette products made by competitors of Complainant, such as Puff Bar Plus Disposable Vape.

On October 14, 2021, Complainant filed a UDRP complaint against a respondent Frank Papay of the Russian Federation in connection with the domain name <heatstoreonline.com>. On November 1, 2021, eight days before the Domain Name in this case was registered, Frank Papay received notice of that complaint. Frank Papay is the English spelling of Respondent in this case, Френк Папай (Cyrillic). The domain name in the prior UDRP case is identical to the Domain Name here, except that the Domain Name

here adds a pluralizing “s” to the word “store.” The website to which the domain name in the prior case resolved was virtually identical to the website operated by Respondent here.

In the prior UDRP case against Frank Papay, the panel found the respondent in bad faith and ordered the transfer of <heatstoreonline.com>. See *Philip Morris Products S.A. v. Frank Papay*, WIPO Case No. [D2021-3407](#).

Respondent has not disputed any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademarks HEET and HEATSTICKS through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to those marks. The Panel finds useful, and incorporates herein, the analysis of the prior WIPO panel in the case discussed above, namely, *Philip Morris Products S.A. v. Frank Papay*, WIPO Case No. [D2021-3407](#). As noted above, the only difference between the domain name in that case and the Domain Name in this case is the addition of a pluralizing “s” in the Domain Name at issue here. In the prior case, the panel addressed the “confusing similarity” issue thus:

“The disputed domain name <heatstoreonline.com> may be read as the words “heat”, “store”, and “online”. Insofar as online stores are common, the key word in the disputed domain name is “heat”; furthermore the string “heats” is discernible and may be findable by search engines. The Respondent’s spelling of “heat” is different from the Complainant’s spelling of HEET or HEETS, but on an objective comparison the disputed domain name is found to be confusingly similar to the Complainant’s relevant trademarks because, among other reasons:

- (i) “heat” is pronounced similarly to HEET or HEETS (section 1.7, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”));
- (ii) “heat” represents a typographical misspelling of HEET, constituting typosquatting;

(iii) the content of the Respondent's website includes multiple references to HEETS in both its stylised or logo form with the letter "E" appearing as three bars, and in conventional typeface, indicating an intention that the disputed domain name shall be confused with the Complainant's trademarks ([WIPO Overview 3.0](#), section 1.15);

(iv) "heat" is a distinctive part of the Complainant's trademark HEATSTICKS."

The Panel adopts this reasoning here, and finds the Domain Name confusingly similar to the marks HEET and HEATSTICKS.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any *bona fide* basis for registering the Domain Name. Nor has Respondent denied any of Complainant's factual allegations or questioned any of the documentary evidence annexed to the Complaint.

The Panel finds it far more likely than not that the respondent in the prior UDRP case discussed above (Frank Papay) is the same person as Respondent in the instant case, since both have the same name (albeit spelled out in different alphabets), and the two domain names and associated websites are nearly identical. Also, the timing of the registration of the Domain Name at issue here – eight days after Frank Papay received notice of the prior case involving a nearly identical domain name – reinforces this conclusion.

Having so found, the Panel has no difficulty finding that Respondent lacks rights or legitimate interests *vis-à-vis* the Domain Name.

On this undisputed record, it is obvious that Respondent was aware of Complainant's HEET, HEETS, and HEATSTICKS trademarks when registering the Domain Name. The finding above from the prior case and the fact that Respondent liberally used Complainant's word and stylized trademarks throughout his website, and purported to sell Complainant's products via the site, make this conclusion unavoidable.

The Panel further concludes that Respondent was trying to create the false impression of some type of affiliation with Complainant, both by virtue of the Domain Name itself and the website content. It also bears noting that Respondent's website has no disclaimer of affiliation with Complainant.

Even if Respondent is selling genuine products made by Complainant, such a use of the Domain Name is not *bona fide*. As noted above, there is no disclaimer at his website, and, more importantly, Respondent is also selling products made by Complainant's competitors. Accordingly, the legitimacy sometimes enjoyed by

a reseller of a complainant's products cannot be claimed by Respondent here. See generally *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and is using the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section.

As discussed above, on this undisputed record, the Panel finds that Respondent clearly had Complainant's mark in mind when registering the Domain Name. The Panel further concludes that Respondent's use of the Domain Name – selling products including those made by Complainant's competitors – is a clear instance of bad faith use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <heatstoresonline.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 11, 2023