

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Mikhail Ivanov, Bobbi Kontozoglou, Mikhail Ivanov

Case No. D2023-1968

### **1. The Parties**

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

The Respondents are Mikhail Ivanov, Germany; Bobbi Kontozoglou, Spain; and Mikhail Ivanov, Russian Federation.

### **2. The Domain Names and Registrars**

The disputed domain name <allheets.org> is registered with Dynadot, LLC (the “Registrar”).

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

The disputed domain name <heetsnews.com> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 3, 2023. On May 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 3, May 4, and May 17, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Private Registrations and Dynadot Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2023, 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 May 26, 2023.

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 Respondents of the Complaint, and the proceedings commenced on June 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2023. The Respondents did not submit any response.

Accordingly, the Center notified the Respondents' default on June 28, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on July 21, 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 is part of a 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.

While transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs", which the Complainant 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 which is a tobacco heating system called IQOS.

IQOS is a precisely controlled heating device into which specially designed tobacco sticks identified with the brand names HEETS, HEATSTICKS and TEREA 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 devices 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 a 20 percent share of the market in such country. Today, the IQOS System is available in key cities in around 66 markets across the world and is almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant is the owner, amongst others, of the following trademark registrations, as per trademark registration certificates in Annex 6 to the Complaint:

- United States of America trademark registration No. 5860364 for HEETS (word mark), filed on August 28, 2018 and registered on September 17, 2019 in international class 34;
- United States of America trademark registration No. 4758618 for HEATSTICKS (word mark), filed on May 2, 2014 and registered on June 23, 2015, in international class 34;
- United States of America trademark registration No. 4763090 IQOS (word mark), filed on May 2, 2014 and registered on June 30, 2015 in international classes 9, 11, and 34;
- International trademark registration No. 1326410 for HEETS (word mark), registered on July 19, 2016 in international classes 9, 11, and 34;
- International trademark registration No. 1328679 for HEETS (figurative mark), registered on July 20, 2016, in international classes 9, 11, and 34;
- International trademark registration No. 1338099 for IQOS (figurative mark), registered on November 22, 2016, in international class 35;
- International trademark registration No. 1343294 for THIS CHANGES EVERYTHING (word mark), registered on December 12, 2016 in international class 34.

The disputed domain names <allheets.org>, registered on October 19, 2020, <heatsticksheets.com> registered on September 25, 2022, and <heetsnews.com>, registered on October 23, 2020, are pointed to

web pages providing information on the HEETS product range and including hyperlinks which redirect users to a third-party online shop at <smokeus.org>, offering tobacco-related products.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that:

- i) the disputed domain names are confusingly similar to the trademarks HEETS and HEATSTICKS in which it has established rights;
- ii) the Respondents have no rights or legitimate interests in the disputed domain names as they have not been authorized to use the Complainant's trademarks and to resell any of its IQOS system products; the Respondents are seeking to obtain an unfair commercial gain and do not meet the requirements set forth in the leading case *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) for a *bona fide* offering of goods or services, as the Respondents are prominently using the Complainant's trademarks HEETS, HEATSTICKS and THIS CHANGES EVERYTHING and have also displayed official product images without authorization. The Complainant also submits that the Respondents are giving the impression that the Complainant has been authorized to sell its HEETS products and IQOS Multi devices and HEETS branded sticks in the United States, which is not the case since they have not yet been authorized for sale by the United States Food and Drug Administration (FDA);
- iii) the Respondents registered the disputed domain names in bad faith as the use of the terms HEETS and HEATSTICKS, which are purely imaginative and unique terms, and the Respondents' sale of the Complainant's IQOS System immediately upon registration of the disputed domain names demonstrate that the Respondents were clearly aware of the Complainant and its products at the time of registration. The Complainant also submits that the Respondents used the disputed domain names in bad faith, with the intention of attracting, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of their websites.

Lastly, the Complainant informs the Panel that the Respondent was recently involved in a UDRP case (*Philip Morris Products S.A. v. Super Privacy Service LTD c/o Dynadot / Bobbi Kontozoglou*, WIPO Case No. [D2022-1468](#)) concerning the domain name <heetsflavours.org> and contends that this shows a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademarks.

### B. Respondents

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

## 6. Discussion and Findings

### 6.1. Consolidation of multiple Respondents

Paragraph 10(e) of the Rules provides that a panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and the Rules.

As stated in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "Where a complaint is filed against multiple respondents, panels look at

whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. UDRP panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s)."

The Complainant asserted that the disputed domain names, although registered in the name of different individuals, are under common control since:

- (i) two of the three disputed domain names were registered around the same date in October 2020;
- (ii) each of the respective websites associated with the disputed domain names include hyperlinks which redirect to the same third-party online shop offering for sale the Complainant's HEETS tobacco products (namely "https://smokeus.org/").

Considering the circumstances highlighted by the Complainant and the additional commonalities in the registration information (such as the same registrant name indicated for <heatsticksheets.com> and <heetsnews.com>), the Panel finds that the disputed domain names are likely under common control. Indeed, the disputed domain names all incorporate the Complainants' trademarks with the mere addition of descriptive terms and have been pointed to similar websites publishing articles on the Complainant's HEET products, including hyperlinks that all lead to the same online store – it is plainly reasonable to infer that such redirection is done for the benefit of persons acting in concert, if there are even separate individuals behind the registrations.

In view of the above, this Panel concludes that the consolidation of the multiple domain names is appropriate in this case and is consistent with the Policy and Rules as well as with prior relevant UDRP decisions in this area (see, amongst others, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

Therefore, the Panel will now proceed to a decision on the merits of the case.

## 6.2. Substantive Issues

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondents are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

## A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. See "[WIPO Overview 3.0](#)", section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's trademarks are reproduced within the disputed domain names. Specifically, the HEETS and HEATSTICKS trademarks are both entirely reproduced in the disputed domain name <heatsticksheets.com>, while the HEETS trademark is reproduced in the disputed domain names <allheets.org> and <heetsnews.com>. Accordingly, the disputed domain names are identical or confusingly similar to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "all" and "news") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names <allheets.org> and <heetsnews.com> and the HEETS trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant's *prima facie* showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondents and the Complainant. The Respondents are not licensees of the Complainant, nor have the Respondents otherwise obtained an authorization to use the Complainant's trademarks. Moreover, there is no element from which the Panel could infer the Respondents' rights and legitimate interests over the disputed domain names, or that the Respondents might be commonly known by the disputed domain names.

The Panel finds that the Respondents' use of the disputed domain names to direct users to websites posting information on the HEETS product range without publishing any disclaimer, let alone an accurate and prominent one, to clarify its lack of relationship with the Complainant and also mainly using the site to displaying hyperlinks which redirect users to a third party online shop at <smokeus.org> does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for

commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademarks. See also in this regard, [WIPO Overview 3.0](#) at section 2.5.1.

The panel also notes several aspects of the website to which the disputed domain names redirect do not indicate a *bona fide* operations, e.g., the postal address in the "contact us" page is merely "Address: Brooklyn, NY 10036", the site makes various references to EU compliance and shipping to the EU but the only actual shipping option (assuming it is genuine) is for the USA, and the text of the page itself seems to be made up (just as one example: "Various brands are available and your order is just one click away. You will end up where you needed to get when you have entered. The Home page will give you a clue of what we are about. We will try to leave you satisfied and impress you with the quality of our service.").

Based on the available record, the Panel finds the second element of the Policy has been established

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

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that, in view of the prior use of the trademarks HEETS and HEATSTICKS in connection with the smoking products of the Complainant and considering the disputed domain names have been pointed to websites featuring the Complainant's trademarks and displaying information on the Complainant's HEETS products, the Respondents must have been aware of the Complainant's trademarks at the time of registration.

The Panel also finds that, by pointing the disputed domain names to websites publishing "information" on the Complainant's products and including in the text hyperlinks which redirect users to a third-party online shop at <smokeus.org> (whilst also failing to accurately and prominently disclose the relationship with the trademark owner) the Respondents have intentionally attempted to attract Internet users to their website for commercial gain, by causing a likelihood of confusion with the trademarks HEETS and HEATSTICKS as to the source, sponsorship, affiliation or endorsement of their websites and the products promoted therein according to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 names, <allheets.org>, <heatsticksheets.com>, and <heetsnews.com>, be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: August 8, 2023