

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Mert Adnan  
Case No. D2023-2864

### **1. The Parties**

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

The Respondent is Mert Adnan, Türkiye.

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

The disputed domain names <dumaniqosheets.shop>, <heetsiqosal.shop>, <iqosshop.shop>, <realheetssmoke.shop> and <realsmokeheets.shop> are registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names <dumaniqosheets.shop>, <iqosshop.shop> and <realsmokeheets.shop>. On the same day, 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 Respondent (Private Registrations) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 the first amended Complaint on July 7, 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 Respondent of the Complaint, and the proceedings commenced on July 7, 2023. The Complainant filed the second amended Complaint on July 20, 2023, requesting the addition of the disputed domain names <heetsiqosal.shop> and <realheetssmoke.shop> (“Additional Domain Names”) to this proceeding.

In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on August 1, 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.

On August 4, 2023, the Panel issued Procedural Order No. 1 accepting the Complainant's request to add the Additional Domain Names after the formal commencement of the proceeding and instructing the Center to send a request for the Registrar's verification in relation to the Additional Domain Names, inviting the Respondent to comment on the Complainant's further submission regarding the Additional Domain Names by August 10, 2023. The Registrar disclosed that the registrant for the Additional Domain Names is the same as the named Respondent and confirmed to have placed a Registrar LOCK on the Additional Domain Names during the present proceeding. The Respondent did not submit any reply or comment.

#### 4. Factual Background

The Complainant is part of the Philip Morris International Inc. (hereinafter referred to as "PMI"), an international tobacco conglomerate that sells tobacco products in around 180 countries of the world.

One of its products is the IQOS system, a precisely controlled heating device into which specially designed tobacco products under the trademarks HEETS, HEATSTICKS or TEREA are inserted and heated to generate flavorful nicotine-containing aerosol. Such products are being marketed in key cities in around 71 markets across the world through PMI's official IQOS stores and websites, and selected authorized distributors and retailers.

The Complainant owns, among others, the following trademarks (Annexes 6 and 7 to the Complaint):

- International registration No. 1218246 for the word mark IQOS, registered on July 10, 2014, in classes 9, 11 and 34; and
- International registration No. 1326410 for the word mark HEETS, registered on July 19, 2016, in classes 9, 11, and 34.

The disputed domain names are the following:

Disputed domain name	Registration date	Present use
<dumaniqosheets.shop>	April 26, 2023	Contains links to "IQOS SATIN AL" available at <realsmokeshopping.com>
<heetseqosal.shop>	April 26, 2023	Redirects to <dumaniqosheets.shop> and contains links to "IQOS SATIN AL" available at <realsmokeshopping.com>
<iqosshop.shop>	April 26, 2023	Redirects to <dumaniqosheets.shop> and contains links to "IQOS SATIN AL" available at <realsmokeshopping.com>
<realheetssmoke.shop>	April 26, 2023	Redirects to <dumaniqosheets.shop> and contains links to "IQOS SATIN AL" available at <realsmokeshopping.com>
<realsmokeheets.shop>	April 26, 2023	Redirects to <dumaniqosheets.shop> and contains links to "IQOS SATIN AL" available at <realsmokeshopping.com>

The website available at <realsmokeshopping.com> contains an online shop targeting the Turkish market, allegedly selling and offering the Complainant's IQOS system, as well as third party products of other commercial origin.

## 5. Parties' Contentions

### A. Complainant

The Complainant claims to have developed the IQOS system, first launched in Nagoya, Japan in 2014.

Asserting to have invested over USD 9 billion in extensive international sales and marketing efforts to promote its IQOS system, the Complainant states that its new product has obtained considerable international success and reputation, approximately having 19.1 million relevant consumers worldwide. The Complainant further states that the Respondent is not known nor is in any way related to any company belonging to PMI and is not authorized to use the IQOS and/or HEETS trademarks, or any phonetically similar mark therewith.

Also according to the Complainant, the use of the disputed domain names in connection with an online shop targeting the Turkish market and clearly purporting to be an official online retailer of the Complainant's IQOS system by using the Complainant's IQOS trademark as well as the registered logo, further using a number of the Complainant's official product images, without the Complainant's authorization, characterizes an attempt to pass off as an official online retailer of the Complainant's products in Türkiye, when, in fact, the Complainant's products are not currently sold in that country.

Under the Complainant's view, the disputed domain names reproduce the Complainant's IQOS and/or HEETS trademarks with the addition of the terms "duman" (informal translation for "smoke"), "al", "shop" and "real", what is insufficient to avoid a finding of confusing similarity under the Policy. The Complainant further contends that the unlawful association with the Complainant's trademarks is exacerbated by the use of the Complainant's logo as well as official product images at the website available at <realsmokesshopping.com> without the Complainant's authorization.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS and/or HEETS trademarks or a domain name which will be associated with these trademarks;
- (ii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, rather showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant;
- (iii) the Respondent is not an authorized reseller of the Complainant's IQOS system, being Internet users / relevant consumers misled regarding the relationship between the disputed domain names and the Complainant;
- (iv) the criteria for a *bona fide* offering of goods or services as established in *Oki Data Americas, Inc. v. ASD, Inc*, WIPO Case No. [D2001-0903](#) are not met, given that the Respondent is not only offering the Complainant's products but also competing tobacco products and accessories of other commercial origin, also not effectively disclosing the lack of relationship between the Respondent and the Complainant;
- (v) the disputed domain names and the content of the website to which they resolve suggest at least an affiliation with the Complainant which in fact does not exist; and
- (vi) the illegitimacy of the Respondent's use of the disputed domain names is further shown by the fact that the Complainant does not currently offer for sale its IQOS System in the territory of Türkiye, and the online shop provided under the disputed domain names as well as the third party online shop to which users / relevant consumers are redirected to from the website (namely,

“www.realsmokesshopping.com”) creates the false impression that the Complainant has officially introduced the IQOS system into the Turkish market, what is not true.

As to the registration and use of the disputed domain names in bad faith, the Complainant states that:

- (i) the Respondent knew of the Complainant’s trademarks when registering the disputed domain names;
- (ii) the IQOS and HEETS marks are not commonly used to refer to tobacco products and therefore it is beyond the realm of reasonable coincidence that the Respondent chose the disputed domain names without intention of invoking a misleading association with the Complainant;
- (iii) the purpose of the Respondent’s registration of the disputed domain names was to attract, for commercial gain, Internet users to the websites by creating a likelihood of confusion with the Complainant’s registered IQOS and HEETS trademarks as to the source, sponsorship, affiliation, or endorsement of its websites;
- (iv) by reproducing the Complainant’s registered trademarks in the disputed domain names and in the title of the websites, the Respondent’s website suggest the Complainant or an affiliated dealer of the Complainant as the source of the website which is not the case; being this suggestion also supported by the Respondent’s use of the Complainant’s official product images; and
- (v) the choice to retain a privacy protection service so as to hide the Respondent’s true identity is a further indication of bad faith as recognized in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 3.6.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain names.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### **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 name. [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. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the marks IQOS and/or HEETS is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (terms “duman”, “al”, “shop”, “smoke”, and “real”) 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 and the mark for the purposes of the Policy. [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 the 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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has 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.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent which has not been commonly known by the disputed domain names and neither is an authorized reseller of the Complainant’s IQOS system, nor has it been licensed or otherwise permitted to use any of the Complainant’s trademarks or to register a domain name incorporating its IQOS and/or HEETS trademarks.

Also according to the evidence submitted by the Complainant, the nature of the disputed domain names, combined with the use made of the disputed domain names in connection with an online shop reproducing the Complainant’s trademarks, together with the unauthorized reproduction of the Complainant’s official marketing product images, clearly suggests at least an affiliation with the Complainant which in fact does not exist, especially in a country where the Complainant’s products are not being marketed.

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

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

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a 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.

In this case, both the registration and use of the disputed domain names in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the reproduction of the IQOS and/or HEETS trademarks in the disputed domain names, as well as the online shop that is available at the website relating to the disputed domain names, together with the unauthorized reproduction of the Complainant's official product images, which create a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names.

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, <dumaniqosheets.shop>, <heetsiqosal.shop>, <iqosshop.shop>, <realheetssmoke.shop>, and <realSmokeheets.shop>, be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: August 18, 2023