

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Френк Папай  
Case No. D2023-2943

### **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 <heatonlinestore.com> 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 July 10, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on July 14, 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 July 14, 2023.

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 July 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 7, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on August 14, 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

Complainant is an international tobacco and smoke-free products company. Complainant's smoke-free products includes a tobacco heating system called IQOS that heats specially designed tobacco sticks marketed under the brands HEETS, HEATSTICKS and TEREА. IQOS devices have been sold since 2014, starting in Japan, and are now sold in around 71 markets in the world. Some of the IQOS devices, notably the HEETS products, are not yet authorized for sale in the United States of America. Complainant is the owner of numerous trademark registrations that include different spellings of "heat" as the trademark or part of the trademark (the "HEET/HEETS Marks" and the "HEATSTICKS Marks"), including the following:

Mark	Jurisdiction	International Class(es)	Registration No.	Registration Date
HEETS and Design	International Registration	9, 11, 34	1328679	July 20, 2016
HEETS	International Registration	9, 11, 34	1326410	July 19, 2016
HEATSTICKS	International Registration	34	1217386	July 21, 2014
HEET	International Registration	9, 11, 34	1312086	May 17, 2016
HEATSTICKS	United States of America	34	4758618	June 23, 2015

Each of the HEETS and Design, and HEETS international registrations designates the United States of America and Russian Federation, and the HEET international registration designates the Russian Federation.

Complainant also owns international registrations for IQOS and IQOS and Design trademarks and a registration in the United States of America for IQOS.

The disputed domain name was registered March 13, 2023 originally in the name of a privacy service.

Complainant provided evidence showing that the disputed domain name is being used in connection with a website that uses Complainant's HEETS Marks, a variation of the HEATSTICKS Marks, and other trademarks and copyrighted materials of Complainant, in connection with the sale of smoke-free products, including products that appear to be IQOS products, sticks, and competitor products. The website is written in English, indicates shipping to the United States of America, and quotes all prices in United States Dollars (USD).

Complainant further provided evidence that Complainant successfully filed a UDRP complaint against the domain name <heatstoreonline.com> (*Philip Morris Products S.A. v. Frank Papay*, WIPO Case No. [D2021-3407](#)), which was associated with a website similar to the website associated with the disputed domain name. One month after that complaint was filed, Respondent registered the domain name <heatstoresonline.com> (*Philip Morris Products S.A. v. Френк Папай*, WIPO Case No. [D2023-0893](#)) which was associated with a website identical to the website associated with the disputed domain name. Complainant filed another successful UDRP complaint against that domain name. Less than one month later after Complainant filed that complaint, Respondent registered the disputed domain name.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that the disputed domain name is confusingly similar to the HEET/HEETS Marks and the HEATSTICKS Marks because it contains the term "heat" and the descriptive terms "online" and "store," as well as the Top-Level Domain ("TLD") ".com". Complainant contends this adopts the indicative part of the HEATSTICKS Marks. Complainant notes that the disputed domain name uses "heat" instead of "heet" from the HEET Marks but notes the two terms are phonetically identical and that "heat" is just a misspelling of the HEET/HEETS Marks, and when combined with the descriptive terms "online" and "store" and used with Respondent's website, shows that the disputed domain name serves to divert traffic away from Complainant. Complainant cites to section 1.14 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") (the Panel notes the relevant section is section 1.15) to support the premise that the content of a website associated with a domain name can confirm confusing similarity when there is *prima facie* evidence that a respondent is targeting a trademark through the disputed domain name. Complainant further contends that the TLD may be disregarded with respect to a finding of confusing similarity.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name, has not been licensed or otherwise permitted to use any of its trademarks or to register the disputed domain name. Complainant contends that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and Respondent's website is not a *bona fide* offering of goods or services because even if Respondent was an authorized reseller or distributor, which Complainant does not admit, Respondent's use of the disputed domain name to suggest an affiliation with the HEETS and HEATSTICKS Marks and other property of Complainant while selling competitors' products prevents a finding of a *bona fide* offering of goods. Complainant also asserts that Respondent's website's marketing of some products into the United States of America, that Complainant does not currently sell because they are not authorized for sale, is further evidence of the illegitimacy of Respondent's use of the disputed domain name.

Complainant contends that Respondent knew of the HEET/HEETS Marks and the HEATSTICKS Marks as evidenced by Respondent's registering the disputed domain name less than a month after Complaint filed a UDRP complaint against a similar domain name registered by Respondent. Complainant contends that Respondent registered the disputed domain name for the purpose of disrupting Complainant's business by creating a likelihood of confusion with the HEET/HEETS Marks and the HEATSTICKS Marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website by using the HEETS Marks and a variation of the HEATSTICKS Marks. Complainant asserts that the terms "heet" and "heatsticks" are made up terms that are not commonly used to refer to tobacco products. Complainant also contends that the disputed domain name is a form of typosquatting, which is also evidence of bad faith, along with Respondent's use of a privacy service.

### B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

Complainant's use of the HEET/HEETS Marks and the HEATSTICKS Marks for the last nine years and registrations for the same are more than sufficient to establish that Complainant has trademark rights in the HEET/HEETS Marks and the HEATSTICKS Marks.

Complainant contends that the disputed domain name is confusingly similar to the HEET/HEETS Marks and the HEATSTICKS Marks.

Given that the disputed domain name incorporates a misspelled version of the Complainant's HEET/HEETS Marks and the initial part of the HEATSTICKS Marks, Complainant's trademarks are recognizable in the disputed domain name. The Panel further notes that the content of the Respondent's website includes multiple references to HEETS in different forms including those identical to Complainant's HEETS Marks indicates Respondent's intention to target Complainant's marks through the disputed domain name, which confirms confusing similarity.

The Panel therefore finds that the disputed domain name is confusingly similar to the HEET/HEETS Marks and the HEATSTICKS Marks.

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

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use the HEET/HEETS Marks and the HEATSTICKS Marks.

Respondent's use of the disputed domain name in association with a website marketing and selling what appears to be Complainant's products, targeted to the United States of America but also offering for sale products not authorized for sale in the United States of America, selling competitive products, all while falsely creating the appearance, through use of the disputed domain name, of an affiliation or sponsorship by Complainant is not a *bona fide* offering of goods or services nor a legitimate noncommercial fair use that would give rise to rights or a legitimate interest in the disputed domain name.

Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name. For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

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

Given i) the timing of Complainant's first use of the HEET/HEETS Marks and the HEATSTICKS Marks and the numerous registrations of the HEET/HEETS Marks and the HEATSTICKS Marks, predating registration of the disputed domain name by years, ii) Respondent's registration of the disputed domain name shortly after a UDRP complaint against a similar domain name was filed by Complainant, iii) Complainant's use of the HEETS Marks and the HEATSTICKS Marks in association with tobacco sticks, and iv) Respondent's use of the disputed domain name, indicates that Respondent had clear knowledge of the HEET/HEETS Marks and the HEATSTICKS Marks and Complainant's business prior to registration.

The Panel finds that Respondent's registration of the disputed domain name was in bad faith.

In addition, the Panel finds Respondent's usage of the disputed domain name as described above to attract consumers to a website associated with the disputed domain name by falsely associating the website with Complainant constitutes use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and has been used in bad faith.

## **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 <heatonlinestore.com> be transferred to Complainant.

/Timothy D. Casey/

**Timothy D. Casey**

Sole Panelist

Date: September 11, 2023