

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. FHM Fokhruddin, amrbagan, ALLHEETS
Case No. D2023-3538

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, ALLHEETS, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <allheets.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 August 22, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 25, 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 September 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 Respondent of the Complaint, and the proceedings commenced on September 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on October 23, 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") which is a leading international tobacco and smoke-free products company, with products sold around the world. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs") PMI has developed a number of RRP products, one of which is a tobacco heating system called IQOS which is a precisely controlled heating device into which specially designed tobacco sticks under the brand name HEETS, amongst others, are inserted and heated to generate a flavorful nicotine-containing aerosol (IQOS-System). The IQOS-System was first launched in 2014. Today, the IQOS-System is available across the world and is almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers (Annexes 4 and 5 to the Complaint).

The Complainant is the owner of various trademark registrations containing the mark HEETS, *inter alia* the following:

- United Arab Emirates trademark Registration No. 256864 for HEETS (word), registered on December 25, 2017;
- International trademark Registration No. 1326410 for HEETS (word), registered on July 19, 2016 (Annexes 6 and 7 to the Complaint).

The decisions *Philip Morris Products S.A. v. FHM Fokhruddin*, WIPO Case No. [D2022-4730](#), regarding <bestheetsdubai.com>, concerns the Complainant and the Respondent with almost an identical set of facts.

The disputed domain name was registered on September 10, 2022 (Annex 1 to the Complaint); it resolved to a website which provided an online shop promoting and offering the Complainant's IQOS-System; all prices on the website were indicated in United Arab Emirates dirham (AED) currency. Further, the website to which the disputed domain name resolved prominently showed the Complainant's HEETS and IQOS Logo (Annex 8 to the Complaint).

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's registered trademark HEETS: the disputed domain name identically adopts the Complainant's HEETS mark; the addition of the descriptive word "all" is insufficient in itself to avoid a finding of confusing similarity under the first element of the UDRP.

Further, the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its HEETS trademark (or a domain name which will be associated with this trademark). The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent's behavior shows 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.

Finally, the disputed domain name was registered and is being used in bad faith: it is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's HEETS mark when registering the disputed domain name. The Respondent started offering the Complainant's IQOS-System immediately after registering the disputed domain name. Furthermore, the term HEETS is purely an imaginative term and unique to the Complainant. The term HEETS is not commonly used to refer to tobacco products or electronic devices. It is therefore beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name, without the intention of invoking a misleading association with the Complainant.

It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used it with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered HEETS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith.

By reproducing the Complainant's registered trademark in the disputed domain name and using the Complainant's logo on the provided website, the Respondent is clearly suggesting to any Internet user visiting the website provided under the disputed domain name that the Complainant (or an affiliated dealer of the Complainant) is the source of the Website, which is not the case.

In the end, the Respondent's use of a privacy protection service to hide its true identity and the purported recent involvement in the bad faith registration and use of the domain name <bestheetsdubai.com> in the case *Philip Morris Products S.A. v. FHM Fokhruddin*, WIPO Case No. [D2022-4730](#), shows a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademarks.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove 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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

To make out a successful Complaint under the Policy all three conditions must be demonstrated by the Complainant.

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 identity/confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7).

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark HEETS.

In the present case, the disputed domain name is confusingly similar to the HEETS mark in which the Complainant has rights since the Complainant's HEETS mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))). This is the case at present. The addition of the term "all" in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that gTLDs, in this present case “.com”, are generally disregarded when evaluating the confusing similarity under the first element.

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

B. Rights or Legitimate Interests

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 disputed 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 section 2.1 of the [WIPO Overview 3.0](#)).

Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

This finding is also supported by the fact that the Respondent's use of the disputed domain name, as shown in the screenshots submitted as Annex 8 to the Complaint, does not meet the requirements for a reseller or distributor to be making a *bona fide* offering of goods or services under a domain name incorporating a third-party trademark. Rather, the composition of the disputed domain name itself renders an impermissible risk of implied affiliation to the Complainant that is exacerbated given the further impersonating nature of the content found at the website to which the disputed domain name resolves, which hosts the Complainant's trademark and products in an alleged offered for sale without any statement disclaiming association. [WIPO Overview 3.0](#), sections 2.5.1 and 2.8.

Noting the above and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademark HEETS, long before the registration of the disputed domain name. Furthermore, the Complainant is well known and has a strong Internet presence with its IQOS-System and the Respondent allegedly offered products marked with the Complainant's trademark on its website to which the disputed domain name resolved. Finally, the Respondent was already involved in the bad faith registration and use of the domain name <bestheetsdubai.com> against the Complainant in the case *Philip Morris Products S.A. v. FHM Fokhruddin*, WIPO Case No. [D2022-4730](#), which shows a pattern of bad faith conduct in connection with domain names incorporating the Complainant's trademarks.

For all these reasons, it is inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's registered trademark entirely.

(ii)The Complainant has put forward evidence that the disputed domain name resolved to a website which contained products branded with the Complainant's registered trademark and Logo and where the Respondent allegedly offered these products for sale. In doing so, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain name.

Hence, the Panel is convinced that the disputed domain was registered and used in bad faith under paragraph 4(a)(iii) of the Policy; the fact that the Respondent failed to respond to the Complaint also supports this finding.

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 <allheets.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: November 6, 2023