

## ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Tapan Sahni  
Case No. D2023-4435

### 1. The Parties

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

The Respondent is Tapan Sahni, United Arab Emirates (“UAE”).

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2023. On October 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 November 3, 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 proceeding commenced on November 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 3, 2023. The Respondent sent emails communication to the Center on November 1, 2023, and December 4, 2023. The Center sent the Commencement of Panel Appointment Process on December 4, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 7, 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**

##### **A. Complainant**

The Complainant is a company incorporated in Switzerland and is part of the group of companies affiliated with Philip Morris International Inc. ("PMI").

The Complainant is the owner of international registration No. 1326410 for the trade mark HEETS, with a registration date of July 19, 2016; and international registration No. 1218246 for the trade mark IQOS, with a registration date of July 10, 2014.

PMI has used the above marks since 2014 and to date in 71 countries in respect of its products, specifically precisely controlled heating devices into which specially designed tobacco products are inserted and heated to generate a nicotine-containing aerosol.

##### **B. Respondent**

The Respondent is apparently a resident of the UAE.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on September 5, 2023.

##### **D. Use of the Disputed Domain Name**

Prior to the filing of the Complaint, the disputed domain name was used in respect of an English language website offering for sale the Complainant's products in India under the Complainant's HEET and IQOS marks, using the slogan "Welcome to Heetswala.com! Buy heets in India".

The disputed domain name is presently resolved to an English language "coming soon" website, featuring prominently the IQOS mark.

#### **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 name.

Notably, the Complainant contends that its HEETS and IQOS products are not currently sold in India.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions, but sent 2 email communications asking about the proceedings and noting that "The domain and the name has been shut already as demanded in the letter".

## 6. Discussion and Findings

### 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "wala" – meaning "seller" in Hindi) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise. To the contrary, the disputed domain name has been used, without authorisation, to offer the Complainant's products to consumers in India, a country in which the Complainant does not sell its products.

The Panel further finds that the composition of the disputed domain name consisting of the Complainant's HEETS trademark and the added term "wala" – meaning "seller" in Hindi, carries a risk of implied affiliation. The website at the disputed domain name is also using some of the Complainant's official product images without the Complainant's authorization, while at the same time providing a copyright notice at the bottom of the website claiming copyright in the material presented on the website, and without any clear disclaimer of the lack of relationship with the Complainant, strengthening thereby the false impression of an affiliation with the Complainant.

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 Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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. [WIPO Overview 3.0](#), section 3.2.1.

Based on the available record and in light of the manner of use by the Respondent of the disputed domain name as described above, the Panel finds that the Complainant has established the third element of the Policy.

### **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 <heetswala.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Date: December 21, 2023