

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Hamed rafi rafi, Haamdrfie Sfaii Maghdm
Case No. D2023-4716

1. The Parties

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

The Respondent is Hamed rafi rafi, Haamdrfie Sfaii Maghdm, United Arab Emirates.

2. The Domain Names and Registrars

The disputed domain name <iranheets.com> is registered with 1API GmbH (the “Registrar”).

The disputed domain name <iranheets1.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2023. On November 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 15, 2023 and November 16, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact informations for the disputed domain names which differed from the named Respondent (Private Registration, Redacted For Privacy AE) and contact information in the Complaint.

The Center sent an email communication to the Complainant on December 12, 2023 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on December 13, 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 December 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent sent email communications to the Center on December 2, 2023, December 16, 2023, and December 21, 2023. The Center notified the Respondent of Commencement of Panel Appointment Process on January 16, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on January 22, 2024. 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 the Philip Morris International Inc. ("PMI"), a leader in the field of tobacco, which has been in operation since 1972. The Complainant promotes its business at "www.pmi.com". PMI has developed Reduced Risk Products amongst which is the IQOS system, which was launched in 2014. The IQOS system uses specially designed tobacco sticks branded HEETS or other trademarks belonging to PMI. The Complainant owns trademark registrations for HEETS such as:

- International trademark registration No. 1326410, registered on July 19, 2016.
- International trademark registration No. 1328679, registered on July 20, 2016.

The disputed domain name <iranheets1.com> was registered on August 28, 2023, and <iranheets.com> was registered on August 28, 2022. The disputed domain names offer the Complainant's products and competing 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 the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark HEETS and has registered it in many countries including Iran. The disputed domain names incorporate the Complainant's trademark. The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement. The disputed domain names include the geographical indication "iran". The disputed domain name <iranheets1.com> includes the non-distinctive number "1". The addition of descriptive, generic or geographical words is not enough to eliminate confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names. The Respondent is not an authorized distributor or reseller of the Complainant. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain names. The Respondent is attempting to obtain unfair commercial gain. The Respondent is not an authorized reseller or distributor of the Complainant. For a reseller or a distributor to make a *bona fide* offering of goods or services, he must meet the *Okie Data* test which is not met in the instant case as the websites offer competing products. Furthermore, the disputed domain names suggest affiliation with the Complainant and hence there can be no fair use.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. The Respondent knew of the Complainant's trademark as the disputed domain names incorporate the Complainant's trademark HEETS, which is purely imaginative. The disputed domain names were registered

with the intent to mislead consumers for commercial gain by creating confusion with the Complainant's trademark and products. The Respondent is suggesting that the Complainant is the source of the websites and is using the images of the Complainant's products to reinforce such suggestion and is selling third party products through its website. Lastly, the Respondent is using a privacy protection service to hide its true identity, which may in itself constitute a factor indicating bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions by a formal Response but sent email communications to the Center on December 2, 2023, and December 16, 2023 stating that he does not understand what the problem is.

On December 21, 2023, the Respondent sent an email stating that the disputed domain names direct to showrooms rather than an e-commerce "to cheer people to don't smoke", and that the platform does not allow visitors to purchase the displayed products.

6. Discussion and Findings

Consolidation: Multiple Respondents

The Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 4.11.2.

As regards common control, the Panel notes that the two domain names were registered on the same date within one year from one another, they both resolve to websites selling the products of the Complainant as well as competing products, their composition is almost identical as they differ in just one character which is the number "1", similar images are used on both websites, they are both in Farsi targeting the Iranian market and the contact details are identical or similar. Lastly, the information disclosing the name of the Registrant indicates in the Panel's view that the disputed domain names are registered by the same person, but his name is written slightly differently in English characters in each instance. The email address for both domain holders is the same.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party. In fact, on the contrary, efficiency is one of the considerations to be borne in mind by a panel as per [WIPO Overview 3.0](#) and efficiency can be achieved if these complaints are all dealt with without further delay.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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.

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 entirety of the mark 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.

Although the addition of other terms here, Iran in both domain names and the number "1" in <iranheets1.com>, may bear on assessment of the second and third elements, the Panel finds the addition of such term and number 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.

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.

On December 21, 2023, the Respondent sent an email claiming that disputed domain names direct to showrooms rather than an e-commerce and that visitors are not able to purchase the displayed products on the websites. The Panel notes however that visitors can add products to a cart, there is a price tag on the displayed products, and that a message appears that users must login to their account to proceed to the checkout page. The Panel further notes that when clicking on domain name <iranheets1.com>, the following message appears in big letters on the upper hand side "My Online Store, Heets & Iqos", signaling to users that it is indeed an e-commerce rather than a showroom.

The Panel finds that 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.

Panels have held that the use of a domain name for illegal activity here, claimed sale of competing goods by creating an impression of affiliation can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent was aware of the Complainant's products as the disputed domain names resolve to websites which offer such products.

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.

Panels have held that the use of a domain name for trademark-abusive content, here, sale of competing goods by creating an impression of affiliation constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel further notes that both domain names state at the bottom of the page that "All rights of this website belong to Heets online store", which further gives a false impression that the Respondent is affiliated with the Complainant rather than accurately and prominently disclosing their relationship, or rather the lack thereof. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 names <iranheets.com> and <iranheets1.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: January 26, 2024