

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Bilal Latif, Heets Store
Case No. D2024-1816

1. The Parties

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

The Respondent is Bilal Latif, Heets Store, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <heetsstore.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2024, 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 (Contact Privacy Inc. Customer 0170750504) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 6, 2024, 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 May 9, 2024.

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 May 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 7, 2024.

The Center appointed Áron László as the sole panelist in this matter on June 17, 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 and its related companies are a group of companies specialising in the sale of tobacco products. The Complainant group has sales in 180 countries and sells a number of leading tobacco brands such as MARLBORO. The Complainant group has developed a number of products described as Reduced Risk Products (“RRP”), i.e. products that are said to be less harmful to the smoker than traditional combustible cigarettes. One of the Complainant group’s RRP is IQOS, which is a heating device into which tobacco products under the brand names HEETS and TERE A are inserted. The IQOS system was first launched in Japan in 2014 and is available in 71 markets around the world. The IQOS system is sold almost exclusively through the group’s official stores and selected authorised distributors and retailers.

The Complainant owns a large portfolio of HEETS trademarks, including:

- International Registration No. 1326410 HEETS (word), registered on July 19, 2016,
- International Registration No. 1328679 HEETS (figurative), registered on July 20, 2016,
- the United Arab Emirates Trademark No. 256864 HEETS (word), registered on December 25, 2017,
- the United Arab Emirates Trademark No. 256867 HEETS (figurative), registered on December 25, 2017,
- and many more trademarks around the world.

The disputed domain name was registered on March 29, 2024, and, at the time the Complaint was filed, the disputed domain name resolved to an online store that allegedly sold and offered the Complainant’s HEETS products and other products relating to the IQOS system, as well as third party products.

The Panel accessed the disputed domain name on June 27, 2024, which resolved to an e-commerce website entitled “Heets Store” containing reproductions of the HEETS trademark and offering for sale HEETS tobacco sticks for IQOS heating devices, as well as competing products, such as Lambda devices for customers in the United Arab Emirates. The website makes extensive use of the HEETS trademarks, related logos and the Complainant’s other trademarks. The online store contains links to various social media accounts that also use the HEETS trademarks and logos. The website does not identify the provider of the website other than “Heets Store” and does not recognise the Complainant as the brand owner of the HEETS trademark.

The Respondent is the same person who was the respondent to a previous UDRP complaint filed by the Complainant in relation to the bad faith registration and use of the domain name [heetstore.com](#), where the panel ordered the transfer of that domain name (*Philip Morris Products S.A. v Bilal Latif*, WIPO Case No. [D2023-3868](#)).

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 the disputed domain name is confusingly similar to the Complainant’s HEETS trademark because it consists of the Complainant’s trademark in its entirety with the addition of the word “shop”.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has established a prima facie case that the Respondent has no right or legitimate interest in 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 that includes its HEETS trademark (or a domain name that will be associated with that trademark).

The Respondent is not making a legitimate noncommercial fair use of the disputed domain name. On the contrary, the Respondent's behaviour shows a clear intention to obtain unfair commercial advantage by misleading consumers or tarnishing the Complainant's trademarks. Firstly, the Respondent is not an authorised distributor or reseller of the HEETS products. Secondly, the website linked to the disputed domain name is selling competing tobacco products and/or accessories of other commercial origin. Thirdly, the website hosted at the disputed domain name does not meet the requirements of bona fide offering of goods set forth in numerous panel decisions, the leading case being *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The requirements of the bona fide offering of goods set forth in the Oki Data decision are not met. The website hosted under the disputed domain name suggests an affiliation with the Complainant. The HEETS trademark is fully incorporated in the disputed domain name, the website reproduces the HEETS trademark and logos, uses the Complainant's official product images and marketing materials without the Complainant's permission while claiming copyrights for the same. The website shows no information regarding the identity of the provider other than displaying the name "Heets Store". The Complainant's HEETS products are primarily distributed through official and endorsed stores therefore Internet users are here misled regarding the relationship between the website and the Complainant, and will falsely believe that the website under the disputed domain name belongs to an official or endorsed distributor. In addition, the website linked to the disputed domain name sells competing tobacco products and/or accessories of a different commercial origin described as "IQOS Lambda" and "IQOS CLEANING KIT FROM JAPAN" respectively which creates the false impression that such competing products are related products of the Complainant's IQOS System, which is untrue.

Finally, it is evident from the Respondent's use of the disputed domain name that the Respondent was aware of the Complainant's distinctive HEETS trademark when it registered the disputed domain name. It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used it with the intention of attracting Internet users to the website for commercial gain 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 is supported by the Respondent's use of the Complainant's official product images on the website. In addition, the website linked to the disputed domain name sells competing tobacco products and/or accessories of a different commercial origin. The Complainant submits that the Respondent's alleged recent involvement in the bad faith registration and use of the domain name <heetstore.com> demonstrates a pattern of bad faith conduct in connection with domain names containing the Complainant's trademarks.

Also, the fact that the Respondent uses a privacy protection service to hide its true identity may in itself be a factor indicating bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(i) the domain name registered by the respondent 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 in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint. However, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

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.

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 mark is recognizable 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, the descriptive term "shop" 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.

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.

The disputed domain name currently links to a website allegedly offering the Complainant's goods for consumers in the United Arab Emirates. Therefore, the main question is whether this offering of goods is made in good faith.

Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

In this case, the disputed domain name contains the term "shop" in addition to the Complainant's trademark HEETS, where "shop" as a reference to "retail outlet" implies a certain affiliation with the trademark owner, the Complainant. This is further reinforced by the fact that the website reproduces the HEETS trademark and logos and uses the Complainant's official product images and marketing materials. This false impression is reinforced by the name of the provider indicated as "Heets Store" and "Heets Store Dubai".

Furthermore, the Complainant's HEETS products are not sold in general stores or shops, but are primarily sold through official and endorsed stores. Therefore, users searching for HEETS products could more easily be misled as to the relationship between the website and the Complainant and could mistakenly believe that the website under the disputed domain name belongs to an official or endorsed distributor.

In addition, the website linked to the disputed domain name sells competing tobacco products and/or accessories of a different commercial origin described as "IQOS Lambda" and "IQOS CLEANING KIT FROM JAPAN" respectively which creates the false impression that such competing products are related products of the Complainant's IQOS System, which is untrue. This is a clear indication that the Oki Data criteria relating to the bona fide offering of goods are not met.

On the other hand, the website shows no information regarding the identity of the provider other than displaying the name "Heets Store" and "Heets Store Dubai". Moreover, the website does not clarify to Internet users visiting the Respondent's website that it is not operated by the Complainant ([WIPO Overview 3.0](#), section 2.5.2.). Again, the Respondent failed to rebut the Complainant's prima facie case and to show the bone fide nature of its offering goods on its website.

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.

In the present case, the Panel notes that the Respondent was aware of the Complainant's HEETS trademark when it registered the disputed domain name. The term HEETS is purely fanciful and unique to the Complainant. The term HEETS is not commonly used to refer to tobacco products or electronic devices. It is therefore inconceivable that the Respondent would have chosen the disputed domain name without the intention of creating a misleading association with the Complainant.

It is also apparent from the Respondent's use of the disputed domain name that the Respondent used it with the intention of attracting Internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's registered HEETS trademark as to the source, affiliation or endorsement of its website, which constitutes bad faith under paragraph 4(b)(iv) of the Policy.

By reproducing the Complainant's registered trademark in the disputed domain name and in the title of the website, the Respondent clearly suggests to any Internet user who visits a website hosted under the disputed domain name that the Complainant (or an affiliate of the Complainant) is the source of the website, which it is not. This suggestion is further reinforced by the Respondent's use of the Complainant's official product images and marketing materials accompanied by a copyright notice claiming copyright in the website and its content. Nevertheless, the website linked to the disputed domain name sells competing tobacco products and/or accessories of a different commercial origin, which is a further indication of the Respondent's bad faith.

UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even when directed at the same brand owner (see [WIPO Overview 3.0](#), Section 3.1.2). Here, the Respondent registered a very similar domain name <heetstore.com> on June 24, 2023, which had been found by a previous panel to be registered and used in bad faith, and which was transferred to the Complainant. It appears that the Respondent voluntarily sought to supplement the domain name that it had lost as a result of the previous panel's decision. This allows the panel to establish a pattern of bad faith conduct.

Finally, the fact that the Respondent uses a privacy service to conceal its true identity may be a further factor indicating bad faith. [WIPO Overview 3.0](#), Section 3.6.

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 <heetsstore.com> be transferred to the Complainant.

/Áron László/

Áron László

Sole Panelist

Date: July 1, 2024