

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mehmet Ali Soylu, “7175 Shelton Street Covent Garden London”

Case No. D2024-2347

1. The Parties

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

The Respondent is Mehmet Ali Soylu, “7175 Shelton Street Covent Garden London”, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <tereaaheets.com> is registered with Nics Telekomunikasyon A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 24, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 11, 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 July 12, 2024.

On June 28, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On June 28, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 2, 2024.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on August 9, 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 group of companies affiliated to Philip Morris International Inc. Philip Morris International Inc. is one of the leading international tobacco companies, with products sold in approximately 180 countries.

The Complainant is selling smoke-free cigarettes under its "IQOS" brand. IQOS is a controlled heating device into which specially designed tobacco sticks under the brand names "HEETS" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol. The Complainant owns several trademark registrations for HEETS and TEREAs including the following:

- Turkish Registration TEREAS (word) No. 2019 128867, registered on September 17, 2020, covering tobacco products and electronic cigarettes, and;
- International Registration No. 1328679 for the trademark HEETS (word) designating Türkiye, registered on July 20, 2016, covering tobacco products and electronic cigarettes.

The disputed domain name was registered on April 23, 2024, and resolves to an active website in Turkish offering for sale the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name identically adopts the Complainant's TEREAS and HEETS trademarks.

The Complainant considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name, mainly because the Complainant has neither licensed nor otherwise authorized the Respondent to use its marks or to apply for or use any domain name incorporating TEREAS and HEETS trademark. The Complainant further asserts that the conditions of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) for a bona fide offering of goods or services by a third party are not satisfied.

Finally, in addressing the question of registration and use of the disputed domain name in bad faith, the Complainant observes that the Respondent is well aware of the Complainant's trademark considering that the Respondent is using the Complainant's TEREAS, HEETS and IQOS trademarks and logos and the respective product images and that the Respondent's website clearly suggests that the website belongs to the Complainant or is an official affiliated operator endorsed by the Complainant.

The fact that the website does not provide any information on the true identity of the website provider clearly shows that the Respondent intentionally creates the impression that the products offered on the Respondent's website are provided by the Complainant or at least an official authorized seller by misleading users on the source of the website and thereby attracting, for commercial gain, Internet users to the website.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

6.1. Language of the Proceedings

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. The Registration Agreement is in Turkish. The Complaint was filed in English.

On July 12, 2024, the Complainant submitted Amended Complaint where they requested the language of the proceedings to be English noting a) the disputed domain name uses Latin characters; b) the website at the disputed domain name is directed to, at very least, an English-speaking public. Further, the website related to the disputed domain name includes words and phrases in English suggesting that the Respondent understands English.

The Complainant has invoked numerous UDRP panel decisions where the UDRP panels have accepted English as the language of the proceedings despite the registration agreement having a differing language where it could be presumed from the circumstances of the case that the respondent has knowledge of the English language, while the complainant is not capable of providing the complaint in the language of the registration agreement (e.g. Turkish) without unreasonable effort and costs.

In addition to the Complainant's submission regarding the language of the proceedings, it appears that the Respondent did not submit a Response nor did it formally object to English as the language of the proceedings.

The Center has throughout the proceedings issued its case-related communications, including the Center's Complaint notification documents, in both Turkish and English. The Respondent has chosen not to participate in the proceedings and has been notified of its default.

The Panel notes the following from the *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#): "The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case".

The Panel takes the following into consideration:

a) The Respondent did not object to the Complainant's request that English be the language of the proceedings, despite being notified of it both in English and in Turkish.

b) The Respondent has been given a fair chance to object to the Complainant's choice of English as the language of the proceedings, but has not done so, nor has it participated in the proceedings generally.

c) The Respondent has been given a possibility to submit a Response in Turkish.

d) The Respondent is domiciled in the United Kingdom.

Upon considering the above, the Panel concludes, according to the Rules, paragraph 11(a), that there is no prejudice or unfairness to the Respondent for these proceedings to be conducted in English and for the decision to be rendered in English. Accordingly, the Panel determines that the language of these administrative proceedings be English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy sets forth the following three elements which the Complainant must prove, during the administrative proceedings, to merit a finding that the disputed domain name be transferred to the Complainant:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

Pursuant to paragraph 15(a) of the Rules, the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. A trademark registration provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

As indicated above, the Complainant holds several trademark registrations for the TERE and HEETS trademarks.

The disputed domain name <tereheets.com> integrates the Complainant's TERE and HEETS trademarks in their entirety. The Panel finds that the disputed domain name is composed of the Complainant's two trademarks and thereby is confusingly similar to the Complainant's trademarks.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The onus is on the Complainant to make out at least a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case.

Although the Respondent did not file a Response, a respondent's default does not automatically result in a decision in favor of the complainant. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 and the cases cited therein.

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules.

As there are no exceptional circumstances for the failure of the Respondent to submit a Response, the Panel infers that the Respondent does not deny the facts asserted and contentions made by the Complainant. *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. [D2000-0441](#).

A number of UDRP decisions have addressed the question of when a reseller's use of a mark constitutes a bona fide offering of goods or services. The general view on this was articulated in *Okidata Americas, Inc. v. ASD, Inc.*, supra. See [WIPO Overview 3.0](#) at section 2.8. In that case, the authorized reseller's domain name <okidataparts.com> incorporated the complainant's OKIDATA trademark in full. The panel in *Okidata*

Americas, Inc. v. ASD, Inc., supra, concluded that for a respondent to demonstrate that a resale offering was bona fide, the following conditions must be met:

- the respondent must actually be offering the goods or services at issue;
- the respondent must use the corresponding website to sell only the trademarked goods, otherwise there is the possibility that the respondent is using the trademark in a domain name to bait consumers and then switch them to other goods;
- the site itself must accurately disclose the respondent's relationship with the trademark owner, i.e., respondent may not falsely suggest that it is the trademark owner, or that the website is the official site, if that is not the case; and
- the respondent must not try to "corner the market" in all relevant domain names, or deprive the trademark owner of reflecting its own mark in a domain name.

In this case, it appears from the website, that the Respondent has been operating its business of selling electronic cigarettes under the disputed domain name within Türkiye. The Respondent appears to exclusively sell the Complainant's products.

The Respondent is using the official product images of the Complainant without any authorization. The website at the disputed domain name also uses the Complainant's trademarks prominently with explanations as to how to submit orders, giving the impression that the Respondent is affiliated with the Complainant, or it is an authorized dealer of the Complainant in Türkiye. Another point that is very relevant in this case is that the Complainant does not currently offer for sale its IQOS branded products in the territory of Türkiye.

Lastly, not only the website of the Respondent does not provide any information regarding its ownership, but also the website does not have any indication regarding the relationship or lack thereof with the Complainant.

In addition, considering the identical use of the Complainant's trademarks HEETS and TEREА within the disputed domain name, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

For these reasons, the Panel concludes that the Respondent is not making use of the disputed domain name in connection with a bona fide offering of goods or services.

In the Panel's view the Complainant has made out its prima facie case under this element of the Policy and the Respondent has failed to rebut it. Accordingly, the Complaint succeeds in relation to the second element of the Policy.

C. Registered and Used in Bad Faith

Finally, the Complainant must show that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Considering the Panel's finding under the second element, the Panel finds that the registration and use of the disputed domain name falls under the circumstances described under paragraph 4(b)(iv) of the Policy, namely, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by seeking to create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Lastly, the Panel observed that the Respondent used a privacy shield. While the Respondent's use of a privacy service will not in itself constitute bad faith under the Policy, the Panel may still take it into account and draw adverse inferences. The use of the privacy shield in this case together with other elements (especially in the view of the conceptualization of the disputed domain name which composed of the exact

combination of the Complainant's trademarks TEREHA and HEETS) gives rise to the suspicion that the privacy shield was used to mask the identity of the true registrant and to obstruct proceedings commenced under the Policy. The Panel also notes that the Respondent seems to have used false contact information when registering the disputed domain name.

Accordingly, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been met by the Complainant.

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 <tereheets.com> be transferred to the Complainant.

/Emre Kerim Yardimci/

Emre Kerim Yardimci

Sole Panelist

Date: August 30, 2024