

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mehmet Acar, HetsFiyat
Case No. D2024-3847

1. The Parties

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

The Respondent is Mehmet Acar, HetsFiyat, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <heets-fiyat.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 September 20, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 24, 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 September 25, 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 October 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 1, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on November 6, 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. PMI has developed Reduced Risk Products amongst which is the IQOS system. 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 was registered on March 21, 2024, and resolves to an online shop allegedly selling the Complainant's IQOS system and competing products of other commercial origin.

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 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. The disputed domain name incorporates the Complainant's trademark in its entirety. The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement. The disputed domain name includes the descriptive word "fiyat" ("price" in English). The addition of descriptive, 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 name. The Complainant has not licensed the Respondent to use its trademark. The Complainant's IQOS System is not currently sold in Türkiye. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The Respondent is attempting to obtain unfair commercial gain. The Respondent is not an authorized reseller or distributor of the Complainant. The Respondent's website is selling competing products. For a reseller or a distributor to make a bona fide offering of goods or services, he must meet the *Oki Data* test which is not met in the instant case as the websites offer competing products.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainant's trademark as the disputed domain name was used immediately after registration to sell the Complainant's IQOS system. The Complainant's trademark HEETS is purely imaginative. The disputed domain name was 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.

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.

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 HEETS 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, "fiyat" 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.

Panels have held that the use of a domain name for illegitimate 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 name resolves to a website 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 the website to which the domain name resolves has the Complainant's trademark placed on the top, which further gives a false impression that the Respondent is affiliated with the Complainant. 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 name <heets-fiyat.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: November 11, 2024