

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Lubna Mahmud, Webunty  
Case No. D2023-0577

### **1. The Parties**

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

The Respondent is Lubna Mahmud, Webunty, Bangladesh.

### **2. The Domain Name and Registrar**

The disputed domain name <iqosheetsdubais.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 February 8, 2023. On February 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details and contact information in the Complaint.

The Center verified that the 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 February 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 21, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on March 29, 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**

The Complainant is part of the Philip Morris International Inc. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative IQOS and HEETS trademark registrations around the world, including various registrations in the United Arab Emirates, including Dubai, which is mentioned in the dispute domain name. According to the provided documents in the case file, the Complainant is, among other, the registered owner of the United Arab Emirates Registrations No. 211139 for IQOS (registered on March 16, 2016) and No. 256864 for HEETS (registered on December 25, 2017), each of them for products covered in class 34.

The Complainant also owns and operates various domain names, which incorporate the IQOS trademark, such as <iqos.com>.

The disputed domain name was registered on December 4, 2022, and is being used for an online store offering tobacco products and its derivatives using the Complainant's mark without its authorization.

#### **5. Parties' Contentions**

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

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its IQOS and HEETS trademarks.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It is rather argued that the disputed domain name falsely suggests that there is some official or authorized link between the Complainant and the Respondent.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith.

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

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

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

##### **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 disputed domain name contains two marks of the Complainant (IQOS and HEETS) with the addition of the geographical term "dubai" and an additional letter "s". The Panel finds the entirety of both marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy.

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 the disputed domain name.

While 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 often impossible 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. 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.

The Complainant has claimed, that at the time of filing the Complaint, the disputed domain name resolved to a website purporting to be an official retailer of the Complainant's IQOS System in the United Arab Emirates by using the Complainant's IQOS and HEETS trademarks in the disputed domain name together with the geographical term "dubai". In addition, third party products were also offered for sale. The Panel finds that the Complainant has therefore established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

As stated above, the disputed domain name is being used for an online store offering tobacco products and its derivatives either from the Complainant or from third parties using the Complainant's mark.

Furthermore, the composition of the disputed domain name, comprising the Complainant's IQOS and HEETS trademarks in their entirety, the geographical term "dubai" and an additional letter "s", carries a high risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

The Panel considers that the record of this case reflects that:

- The terms "iqos" and/or "heets" are purely imaginative terms and unique to the Complainant. The terms "iqos" and/or "heets" are not commonly used to refer to tobacco products or electronic devices. It is therefore beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name, without the intention of invoking a misleading association with the Complainant.
- By reproducing the Complainant's registered trademark in the disputed domain name and the title of the Website, the Respondent is clearly suggesting to any Internet user visiting the website that the Complainant (or an affiliated dealer of the Complainant) is the source of the Website, which it is not. This suggestion is further supported by the Respondent's use of the Complainant's official product images accompanied by a copyright notice claiming the copyright for the Website and its contents.
- the Respondent is not only using the Complainant's IQOS and HEETS trademarks for the purposes of offering for sale the IQOS System, but also for purposes of offering for sale third party products of other commercial origin.
- The disputed domain name makes the following false statement within the tab interface of the website: "A Trusted IQOS HEETS Online Store of UAE".
- The Respondent never answered the cease and desist letter and then defaulted.

As a result, there is no doubt that the Respondent knew about the existence of the Complainant and its trademarks. In the circumstances, the Panel finds that the Respondent registered the disputed domain name in bad faith.

With respect to bad faith use, the Panel finds that the disputed domain name is being used for an online store offering tobacco products and its derivatives using the Complainant's mark as well as third party products related to the Complainant's products.

Therefore, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: April 12, 2023