

## **ADMINISTRATIVE PANEL DECISION**

Philip Morris Products S.A. v. Konstantin Danilidi  
Case No. D2024-0008

### **1. The Parties**

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

The Respondent is Konstantin Danilidi, Canada.

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

The disputed domain name <heetflavrs.com> is registered with Spaceship, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 3, 2024. On January 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 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 January 8, 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 January 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on February 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**

It results from the Complainant's undisputed allegations that it is a company which is part of the group of companies affiliated to Philip Morris International Inc., a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or "RRPs", which the Complainant defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products versus continued smoking), it has developed a number of RRP products. One of these RRP's developed and sold by the Complainant is a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System"). Currently the IQOS System is available in key cities in around 71 markets across the world.

The Complainant is the registered owner of many trademarks worldwide for HEETS, in particular International trademark registration HEETS (word) No. 1326410 registered on July 19, 2016, for goods and services in classes 9, 11 and 34 designating amongst others the European Union.

The disputed domain name was registered on July 18, 2022. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to website (prominently using the Complainant's registered HEETS trademark and official product images) which includes hyperlinks which redirect to a third party online shop allegedly selling and offering the Complainant's HEETS tobacco products (namely "www.smokeus.org"). This online shop is also using the Complainant's registered HEETS trademark and a number of the Complainant's official product images without the Complainant's authorization.

##### **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 trademark since it contains its trademark HEETS entirely in addition to the nondistinctive and descriptive addition "flavrs".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its HEETS trademark. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Respondent's behaviour shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant. -The disputed domain name in itself suggests at least an affiliation with the Complainant and its HEETS trademark. In addition, the website to which the disputed domain name resolves prominently and without authorization presents the Complainant's registered HEETS trademark and official product images. The illegitimacy of the Respondent's use of the disputed domain name is further shown by the fact that the Complainant does not currently offer for sale its HEETS products and IQOS Multi devices and HEETS branded sticks, given they have not yet been authorized for sale in the United States by the Food and Drug Administration. The website provided under the disputed domain name and the third party online shop above mentioned, create the false impression that the Complainant has officially introduced its HEETS products and IQOS Multi devices into the United States market – which it has not.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, it is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's HEETS trademark when registering it. By reproducing the Complainant's registered trademark in the disputed domain name and the title of the website to which it

resolves, the Respondent is clearly suggesting to any Internet user visiting a website provided under the disputed domain name 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, as well as the third party online shop to which user / relevant consumer is redirected to from the website (namely, "www.smokeus.org") using the Complainant's registered HEETS trademarks, both accompanied by a copyright notice claiming the copyright for the Website and its content. As stated above, the illegitimacy of the Respondent's use of the disputed domain name is further amplified by the fact that the Complainant does not currently offer for sale its HEETS products and IQOS Multi devices in the United States.

## **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 and 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 a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **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 dominant feature of the relevant mark (i.e. HEET, where the letter "S" is missing) is recognizable within the disputed domain name. Accordingly, the disputed domain name is also confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term (here, "flavrs") 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.

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#) at section 1.11.1.

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 Panel notes that the disputed domain name is clearly constituted by the the dominant feature of the Complainant’s registered trademark (i.e., HEET) and a term (i.e., “flavrs” which is a misspelling of the English term “flavours”), which clearly refers to the Complainant’s field of activity, tending to suggest sponsorship or endorsement by the Complainant. This is also confirmed by the content of the website to which the disputed domain name resolves and of the third party online shop (to which the hyperlinks contained in the website redirect) allegedly selling the Complainant’s products and reproducing without authorization the Complainant’s trademark and logo and the Complainant’s official product images without the Complainant’s authorization.

The composition of the disputed domain name directly targeting the Complainant’s field of activity enhances the false impression that the disputed domain name is somehow officially related to the Complainant and official websites promoting the Complainant’s business. Such composition of the disputed domain name cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See section 2.5.1 of the [WIPO Overview 3.0](#). This is the case in the present proceeding.

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.

One of these circumstances is that the Respondent by using the disputed domain name, 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant’s documented allegations that the disputed domain name resolves to a website, which redirects through hyperlinks to third party online shop, allegedly selling the Complainant’s products and reproducing without authorization the Complainant’s trademark and logo and the Complainant’s official product images. For the Panel, it is therefore evident that the Respondent knew the Complainant’s mark.

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 <heetflavrs.com> be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: February 16, 2024