

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Babar Husain M
Case No. D2022-0742

1. The Parties

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

The Respondent is Babar Husain M, India.

2. The Domain Name and Registrar

The disputed domain name <iqos-heets-dubai.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 10, 2022, 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 March 11, 2022.

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 March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2022.

The Center appointed Lilleengen, Mathias, as the sole panelist in this matter on May 5, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of Philip Morris International Inc. (“PMI”). PMI is an international tobacco company, with products sold in approximately 180 countries. PMI has developed a number of products, such as IQOS. IQOS is a controlled heating device specially designed for tobacco products under the brand names HEETS or HEATSTICKS. The tobacco products are inserted and heated to generate a flavorful nicotine-containing aerosol. The IQOS system was first launched in 2014. The IQOS system is available in key cities in the world, and it has approximately 19.1 million consumers worldwide. It is almost exclusively distributed through PMI’s official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant has trademark registrations relating to its products, such as United Arab Emirates Registration HEETS (word) No. 256864 registered on 25 December 2017, United Arab Emirates Registration IQOS (word) No. 211139 registered on 16 March 2016, United Arab Emirates Registration No. 211139 registered on March 16, 2016, and International Registration No. 1347235 registered on January 24, 2017 and designating *inter alia* India where the Respondent appears to be located.

At the time of filing the Complaint, the Domain Name resolved to a webpage with an online shop allegedly selling and offering the Complainant’s products. The webpage reproduces without authorization a number of the Complainant’s trademarks and official product images. The webpage does not show any details regarding the provider of the webpage, but has a very small disclaimer positioned at the bottom of the webpage.

At the time of drafting the Decision, the Domain Name resolved to a “coming soon” website in English where Internet users are invited to leave their email address.

5. Parties’ Contentions

A. Complainant

The Complainant has registered trademark rights in IQOS and HEETS. The Complainant submits that the Domain Name is confusingly similar to the Complainant’s trademarks. The Domain Name adopts the Complainant’s trademarks. The addition of the geographical indication “dubai” does not prevent a finding of confusing similarity under the first element of the UDRP.

The Complainant asserts that the Respondent is unable to demonstrate rights or legitimate interests in the Domain Name. The Respondent has not been allowed by the Complainant to make any use of its trademarks. The Domain Name resolves to a webpage that does not meet the requirements for a *bona fide* offering of goods. The webpage uses the Complainant’s trademarks and official product images without authorization. Consumers are misled to falsely believe that the webpage under the Domain Name is an official/endorsed distributor. The website includes no proper information regarding the identity of the provider of the website. The disclaimer offered at the bottom of the webpage is not presented in a sufficiently prominent manner.

The Complainant argues that the Respondent had knowledge of the Complainant and its products at the time of registration of the Domain Name. The Respondent registered and used the Domain Name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website. By reproducing the Complainant’s trademarks in the Domain Name and on the webpage, the Respondent suggests the Complainant or an affiliated dealer is the source of the website. This is underlined by the Respondent’s use of the Complainant’s official product images. Additionally, the Respondent’s use of a privacy protection service to hide the Respondent’s identity also indicates bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established rights in the trademarks IQOS and HEETS. The test for confusing similarity involves the comparison between the trademarks and the Domain Name. In this case, the Domain Name adopts the Complainant's trademarks with the addition of two hyphens and "dubai". Therefore, it does not prevent a finding of confusing similarity under the first element of the UDRP.

When assessing confusing similarity, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") ".com", see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to trademarks in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant's trademarks or otherwise make use of the trademarks. Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered rights. The way the Respondent has used the Domain Name to present itself as a reseller of the Complainant's products, is not *bona fide*. The webpage under the Domain Name gives the false impression of a commercial relationship between the webpage and the Complainant. The webpage includes no proper information regarding the identity of the provider of the website, and the website uses the Complainant's trademarks and official product images without Complainant's authorization. The disclaimer offered at the bottom of the webpage is not presented in a sufficiently prominent manner, and in any case is not sufficient to prevent a risk of implied affiliation arising from the composition of the disputed domain name; see [WIPO Overview 3.0](#), section 2.5.1. The Respondent has not undertaken reasonable steps to avoid unfairly passing itself off as related to the Complainant, or to otherwise confuse Internet users (*Philip Morris Products S.A. v. Babar Husain M*, WIPO Case No. [D2020-1471](#)); see [WIPO Overview 3.0](#), section 2.8.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Taking into account the Respondent's use of the Domain Name, the Panel concludes that the Respondent knew of the Complainant and its business when the Respondent registered the Domain Name.

The Respondent has attempted to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Respondent's website suggests that the Complainant or an affiliated dealer is the source. The mere registration of a domain name that is confusingly similar to a widely-known trademark can by itself create a presumption of bad faith, see [WIPO Overview 3.0](#), section 3.1.4. The fact that the Respondent has not replied to the Complainant's contentions further points to bad faith.

The Respondent has included a disclaimer at the bottom of the webpage at the disputed domain name. Noting the composition of the disputed domain name, the Panel notes that the mere existence of a disclaimer, which is not presented in a sufficiently prominent manner, cannot cure the Respondent's bad faith.

The Panel finds that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <iqos-heets-dubai.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: May 10, 2022