

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Super Privacy Service LTD c/o Dynadot /
Bobbi Kontozoglou
Case No. D2022-1468

1. The Parties

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

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America (“United States”) /
Bobbi Kontozoglou, Spain.

2. The Domain Name and Registrar

The disputed domain name <heetsflavours.org> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2022. On April 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 5, 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 May 6, 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 May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on June 3, 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the group Philip Morris International Inc. (“PMI”), which is one of the leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. The Complainant has developed a number of reduced risk products (“RRPs”), one of which 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 flavorful nicotine-containing aerosol.

The Complainant owns the trademark HEETS, which is registered in various countries, including the United States, under Reg. No. 5860364 as of September 17, 2019; and including International Reg. No. 1326410 as of July 19, 2016, designating jurisdictions including China, United States of America, Japan, the European Union and Turkey.

The disputed domain name was registered on October 26, 2020. The disputed domain name resolves to a website where the Complainant’s trademark HEETS is used in connection with products that appear to be smoke-free tobacco products. The website also includes product images copied from the Complainant’s website.

5. Parties’ Contentions

A. Complainant

The disputed domain name identically adopts the Complainant’s HEETS trademark, which is recognizable within the disputed domain name. Any Internet user, when visiting a website provided under the disputed domain name will reasonably expect to find a website commercially linked to the owner of the HEETS trademarks.

The Respondent lacks any right or legitimate interest in the disputed domain name. The Complainant 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 behavior 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.

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 the disputed domain name. The Respondent started offering the Complainant’s IQOS System (or at least the HEETS tobacco sticks for use with the IQOS System) immediately after registering the disputed domain name.

It is also evident from the Respondent’s use of the disputed domain name that the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s registered HEETS trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may, however, bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark, which is clearly recognizable in the disputed domain name. The addition of the word “flavours” does not prevent a finding of confusing similarity with the Complainant’s trademark.

This means that the disputed domain name is confusingly similar with the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name, the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy. Moreover, the Panel finds 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](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain

name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s 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.”

The disputed domain name resolves to a website where the Complainant’s trademark HEETS is used in connection with products that appear to be smoke-free tobacco products. The website also includes product images copied from the Complainant’s website. The Website is clearly purporting to be an official online retailer of the Complainant’s IQOS System in the United States by using the Complainant’s HEETS trademark in the disputed domain name together with the descriptive word “flavours”. This additional term suggests that the Complainant’s products are sold in different flavors at the Respondent’s website and thus is likely to enhance the likelihood of confusion between the Complainant’s trademark and the disputed domain name.

The disputed domain name is therefore used to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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 <heetsflavours.org> be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: June 15, 2022