

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Shahzor Khan
Case No. D2022-3664

1. The Parties

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

The Respondent is Shahzor Khan, India.

2. The Domain Name and Registrar

The disputed domain name <easyheetsiqos.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 October 3, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 4, 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 (Domains By Proxy, LLC, United States of America) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 5, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on November 1, 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 of companies affiliated to Philip Morris International Inc. (“PMI”). PMI is a leading international tobacco and smoke-free products company with products sold in more than 180 countries. PMI produces and sells a controlled heating, smoke-free device under its IQOS mark into which specially designed tobacco products under the brand name HEETS, amongst others, are inserted and heated to generate a flavourful nicotine-containing aerosol. IQOS products were first launched in 2014 and are available in 71 markets across the world. The Complainant’s IQOS and HEETS marks have been recognised as being well known by prior UDRP panels. See, respectively, *Philip Morris Products S.A. v. Protection of Private Person / Daniil Nesterov*, WIPO Case No. [D2019-2150](#); and *Philip Morris Products S.A. v. Логовський Владислав Андрійович, Logovskij Vladislav*, WIPO Case No. [D2020-1044](#).

The Complainant’s IQOS and HEETS marks are registered in many jurisdictions, including in the Respondent’s country of India:

- International Registration No. 1214416 IQOS (stylised) in classes 9, 11 and 34, designating India, with registration date June 11, 2014;
- Indian trade mark registration No. 3263846 HEETS in classes 9, 11 and 34, with registration date May 19, 2016.

The Domain Name was registered on September 14, 2022 and currently resolves to a website purportedly offering the Complainant’s IQOS and HEETS products for sale using the Complainant’s IQOS and HEETS trade marks, featuring the Complainant’s official product images.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its IQOS and HEETS marks as they are wholly contained within the Domain Name, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and is being used in bad faith given that the Respondent’s website is calculated to deceive users into believing that it is associated with the Complainant for the Respondent’s commercial gain.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant’s registered IQOS and HEETS marks are wholly contained within the Domain Name. Where a trade mark is recognisable within the disputed domain name (as in this case), the addition of other elements does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its IQOS and HEETS marks were registered and well known for many years prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's marks and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's website, including use of the Complainant's official product imagery and extensive use of the Complainant's well-known IQOS and HEETS marks, is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation as in this case) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13). To the extent that the Domain Name's website might be considered that of a reseller of the Complainant's products, it does not meet the requirements of the well-known Oki Data test given that the site does not accurately and prominently disclose the Respondent's relationship with the Complainant (*Oki data Americans, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#) at section 2.8).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

The IQOS and HEETS marks are purely imaginative terms unique to the Complainant. This, coupled with the Respondent's use of the Domain Name to purportedly offer the Complainant's products for sale using the Complainant's official product imagery, clearly shows that the Respondent had the Complainant in mind when registering and using the Domain Name and sought to impersonate the Complainant for commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy.

Moreover, UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

The Panel also draws adverse inferences from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3) and the use of a privacy proxy service ([WIPO Overview 3.0](#) at section 3.6). The Complainant has satisfied 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, <easyheetsiqos.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: November 15, 2022