

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Temp name Temp Last Name, Temp
Organization

Case No. D2022-1138

1. The Parties

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

The Respondent is Temp name Temp Last Name, Temp Organization, Turkey.

2. The Domain Name and Registrar

The disputed domain name <biheets.com> is registered with Nics Telekomunikasyon A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 April 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 April 8, 2022.

The Center sent an email communication in English and Turkish to the parties on April 5, 2022, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on April 8, 2022. The Respondent did not comment on the language of the proceeding.

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 April 12, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was May 16, 2022. The Center received an email communication from the Respondent on April 13, 2022.

On April 14, 2022, the Center suspended the proceedings on the Complainant's request. On April 28, 2022, the proceeding was reinstated by the Center on the Complainant's request. The new Response due date was May 16, 2022. The Center informed the Parties that it will proceed to panel appointment on May 17, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 19, 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 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 HEETS trademark registrations around the world, including in Turkey, where the Respondent is reportedly located. According to the Complaint, the Complainant is, among others, the registered owner of the International Trademark Registration No. 1328679 (registered on July 20, 2016) and No. 1326410 (registered on July 19, 2016) for HEETS, both providing trademark protection, *inter alia*, for electronic cigarettes as covered in classes 9, 11, and 34 (hereinafter collectively referred to as "HEETS trademark") (Annexes 6 and 7 to the Complaint).

The Respondent's true identity remains unknown as its name and contact details in the Whois records for the disputed domain name appear to be incomplete and/or incorrect.

The disputed domain name was registered on December 10, 2021.

The screenshots, as provided by the Complainant, show that the disputed domain name resolved to a website in the Turkish language, which was used for offering various kinds of smoke-free products of the Complainant (Annex 8 to the Complaint). On the website, the HEETS trademark as well as further trademarks of the Complainant and its official product images were used without any visible disclaimer describing the (lack of) relationship between the Parties.

At the time of the decision, the disputed domain name no longer resolves to an active website.

5. Parties' Contentions

A. Complainant

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

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. The Complainant believes that the Respondent must have been well aware of the Complainant's HEETS trademark when registering the disputed domain name, particularly as the Respondent uses the Complainant's HEETS trademark on the website linked to the disputed domain name and its genuine product images without authorization and any disclosure of the lack of relationship between the Complainant

and the Respondent.

B. Respondent

The Respondent sent an email communication to the Center in English and Turkish, stating: “The site has been opened for testing purposes only and there is no sale or purchase of any product. The day we received your first e-mail, we took the necessary actions to close the site, and the site was closed from now on, as I mentioned at first, it was only opened for testing purposes. There is no commercial activity.” However, the Respondent has not submitted a formal Response to the Complaint.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Panel determines in accordance with the Complainant’s request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the Registration Agreement of the disputed domain name is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in Turkish and to request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center’s communication about the language of the proceeding, even though communicated in Turkish and English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademark 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 Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

It is further noted that the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark HEETS by virtue of various trademark registrations worldwide, including in Turkey, where the Respondent is reportedly located.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered HEETS trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms or characters would generally not prevent a finding of confusing similarity. The mere addition of the letters "b" and "i" does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's HEETS trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark HEETS in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal Response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

In this regard, the Panel is also convinced that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Oki Data* are apparently not fulfilled in the present case. The Panel particularly notes that the website, which was linked to the disputed domain name did not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and authorized reseller/distributor for the Complainant's products in Turkey. This assessment is further supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In the Panel's view, all this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademark in mind when registering the disputed domain name.

In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its smoke-free products. After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (Annex 8 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website. The Panel particularly notes that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the use of official product images of the Complainant and the Complainant's HEETS trademark on the website linked to the disputed domain name as well as the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

Finally, the Panel believes that the Respondent has deliberately opted for hiding its true identity in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.

The fact that the disputed domain name does not currently resolve to an active website anymore does not change the Panel's findings in this respect. See section 3.3 of the [WIPO Overview 3.0](#).

All in all, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, 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 disputed domain name <biheets.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: June 2, 2022