

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. murat kocal

Case No. D2023-1418

1. The Parties

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

The Respondent is murat kocal, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <heetsiqosaek.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 2023, 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 6, 2023.

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”).

On April 4, 2023, the Center sent an email communication regarding the language of the proceeding in English and Turkish. The Complainant submitted a request to proceed in English on April 6, 2023. The Respondent did not submit any response to the Center’s communication.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint both in English and in Turkish, and the proceedings commenced on April 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 8, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 11, 2023. 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 IQOS and HEETS trademark registrations around the world, including in Türkiye, where the Respondent appears to be located. According to the Complaint, the Complainant is, *among others*, the registered owner of the International Trademark Registration No. 1218246 (registered on July 10, 2014) for IQOS, as well as No. 1328679 (registered on July 20, 2016) and No. 1326410 (registered on July 19, 2016) for HEETS, all of them covering trademark protection, *inter alia*, for electronic cigarettes as covered in classes 9 and 11 (Annex 6 to the Complaint).

The Respondent is reportedly located in Türkiye.

The disputed domain name was registered on July 20, 2022.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in the Turkish language, which is used for offering various kinds of IQOS and HEETS smoke-free products and further competing third-party products (Annex 8 to the Complaint). On the website at the disputed domain name, the Respondent prominently uses the IQOS and HEETS trademarks as well as various original product images of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

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

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 particularly argues that the Respondent must have been well aware of the Complainant's IQOS and HEETS trademarks, when registering the disputed domain name, particularly as the Respondent uses the Complainant's IQOS and HEETS trademarks on the website linked to the disputed domain name and its product images without authorization and disclosure of the missing relationship between the Complainant and the Respondent.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of the administrative proceeding shall be English. Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Complaint or respond to the Center's communication about the language of the proceeding, even though communicated in Turkish and in English. The Panel 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 paragraph 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.

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 a 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *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. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [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 IQOS and HEETS marks by virtue of various trademark registrations, including in Türkiye, where the Respondent appears to be located.

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

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 of evidence 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 IQOS and HEETS trademarks 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 substantial 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 particularly believes 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 notes that the Respondent offers not only products of the Complainant but also competing third party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name does 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 Türkiye. This assessment is particularly 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 view of the Panel, 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 trademarks in mind when registering the disputed domain name. It even appears to the Panel that 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 associated to the disputed domain name, the Panel is convinced that the Respondent intentionally registered the disputed domain name in order to generate traffic to its own website. The prominent use of the IQOS and HEETS trademarks, the overall design of the website associated to the disputed domain name, the use of product images of the Complainant, the sales of third party products and 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 and its IQOS and HEETS trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

Also, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional affirmation of the Panel's finding of bad faith.

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 <heetsiqosaek.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: May 25, 2023