

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Xinke Liu
Case No. D2024-0767

1. The Parties

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

Respondent is Xinke Liu, Australia.

2. The Domain Names and Registrar

The disputed domain names <heetsheets.com>, <heetspro.com>, and <heetsticks.com> are registered with NameCheap, Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2024. On February 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 20, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf), and contact information in the Complaint. The Center sent an email communication to Complainant on February 27, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 4, 2024.

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 Respondent of the Complaint, and the proceedings commenced on March 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 27, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 9, 2024. 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

Complainant is a company organized under the laws of Switzerland and forms part of the larger “Philip Morris International” group of companies, which is engaged in the production and distribution of tobacco and smoke-free products that are being sold in approximately 180 countries worldwide.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its product brands HEETS and HEATSTICKS, inter alia, but not limited to, the following:

- word mark HEETS, International Registration with registration number: 1326410, registration date: July 19, 2016, status: active;
- word mark HEATSTICKS, International Registration with, registration number: 1217386, registration date: July 21, 2014, status: active.

Respondent, according to the disclose made by the Registrar as well as Whois information for the disputed domain names, is located in Australia. The disputed domain names were all registered on September 5, 2023, and resolve to lookalike websites (with identical contact information) that offer in various languages Complainant’s tobacco and smoke-free products for online sale, thereby prominently displaying other trademarks belonging to Complainant such as IQOS and MARLBORO.

Complainant requests that the disputed domain names be consolidated in the Complaint and be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names. Notably, Complainant contends to be since decades a leading international tobacco and smoke-free products company, and that its products including Reduced Risk Products (“RPRs”) such as the IQOS system have meanwhile achieved considerable international success and reputation.

First, Complainant claims that Respondent is the same person, or is connected to the same person, who was the respondent in previous UDRP decisions , e.g. *Philip Morris Products S.A. v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Liu Xinke / IQOSPOST/Japan Tokyo Trading Pty Limited*, WIPO Case No. [D2021-2767](#); *Philip Morris Products S.A. v. Withheld for Privacy ehf / Xinke Liu*, WIPO Case No. [D2021-3733](#) or *Philip Morris Products S.A. v. Xinke Liu*, WIPO Case No. [D2023-0171](#).

Second, Complainant submits that the disputed domain names are confusingly similar to its HEETS and HEATSTICKS trademarks as they reproduce e.g. the HEETS trademark in its entirety, simply added by the words “pro” or “sticks”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain names since (1) Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks or to register a domain name incorporating its HEETS or HEATSTICKS trademarks (or a domain name which will be associated therewith), (2) 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 Complainant (e.g. Respondent is not an authorized distributor or reseller of Complainant’s IQOS system, and the websites under the disputed domain names do not meet the so-

called *Oki Data* requirements for a bona fide offering of goods). Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) it is evident from Respondent's use of the disputed domain names that it knew of Complainant's trademarks when registering the disputed domain names, (2) the term "heets" is purely imaginative and it is beyond the realm of reasonable coincidence that Respondent chose the disputed domain names without the intention of invoking a misleading association with Complainant, and (3) by reproducing Complainant's registered trademarks in the disputed domain names and the title of the websites thereunder, Respondent is clearly suggesting to any Internet user visiting a website provided under the disputed domain names that Complainant (or an affiliated dealer of Complainant) is the source of the website(s), which it is not.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

First, it is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's HEETS and HEATSTICKS trademarks and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Complainant has shown rights in respect of the HEETS and the HEATSTICKS trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the HEETS trademark is reproduced within all three disputed domain names, simply added by the terms "pro" or "sticks", and in the case of the disputed domain name <heetsticks.com> by the same time constituting in a typo-squatted version of Complainant's HEATSTICKS trademark by exchanging the third letter "a" for an "e". Accordingly, the disputed domain names are confusingly similar to Complainant's HEETS and HEATSTICKS trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the terms "pro" and "sticks") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and Complainant's HEETS and HEATSTICKS trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

In particular, Respondent has not been authorized to use Complainant's HEETS or HEATSTICKS trademarks, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the imaginative term "heets" or the term "heatsticks" on its own.

In addressing the question whether or not Respondent is using the disputed domain names in connection with a bona fide offering of goods and services (paragraph 4(c)(i) of the Policy), the Panel recognizes that all of the three disputed domain names resolve to lookalike websites (with identical contact information) that purportedly offer in various languages Complainant's tobacco and smoke-free products for online sale, thereby prominently displaying other trademarks belonging to Complainant such as IQOS and MARLBORO without any permission to do so; by the same time, the disclaimer contained in the footer of those websites is nearly illegible (e.g. a dark grey font presented on a black background) and neither adequately discloses the provider's identity nor its (existing or not existing) relationship with Complainant. Also, the Panel notes that Respondent has registered at least a multitude of three disputed domain names including Complainant's HEETS and HEATSTICKS trademarks, out of which one constitutes a clear typo-squatting (see <heetsticks.com>) and another a kind of typo-squatting by including the HEETS trademark even twice (see <heetsheets.com>). Therefore, both the disputed domain names as well as the websites to which they resolve impersonate or at least suggest endorsement by Complainant (see also: *Philip Morris Products S.A. v. Xinke Liu*, WIPO Case No. [D2023-0378](#)); UDRP panels, however, have long held that neither domain names of such nature nor using them to operate websites which hide that they are not operated by Complainant as the trademark owner may constitute bona fide use and so give no rise to any rights or legitimate interests of Respondent therein (see [WIPO Overview 3.0](#), sections 2.5.1 and 2.5.2). And finally, for the sake of completeness, absent an accurate or prominent disclosure of Respondent's relationship with Complainant, Respondent's making use of the disputed domain names does not meet the so-called *Ok! Data* principles either (see [WIPO Overview 3.0](#), section 2.8.1).

The Panel, therefore, finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Finally, the Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

As set out above, the Panel notes that all of the three disputed domain names resolve to lookalike websites (with identical contact information) that purportedly offer in various languages Complainant's tobacco and smoke-free products for online sale, thereby prominently displaying other trademarks belonging to Complainant such as IQOS and MARLBORO without any permission to do so; by the same time, the disclaimer contained in the footer of those websites is nearly illegible (e.g. a dark grey font presented on a black background) and neither adequately discloses the provider's identity nor its (existing or not existing) relationship with Complainant. Also, the Panel notes that Respondent has registered at least a multitude of three domain names including Complainant's HEETS and/or HEATSTICKS trademarks, out of which one constitutes a clear typo-squatting (see <heetsticks.com>) and another a kind of typo-squatting by including the HEETS trademark even twice (see <heetsheets.com>). As both the disputed domain names as well as the websites to which they resolve impersonate or at least suggest endorsement by Complainant, it is also obvious that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own websites by creating a likelihood of confusion with Complainant's HEETS and HEATSTICKS trademarks as to the source, sponsorship, affiliation or endorsement of Respondent's websites. Such circumstances are

evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Moreover, Respondent obviously is also engaged in a pattern of conduct to register and make use of (disputed) domain names relating to Complainant's trademarks, as demonstrated by the multitude of disputed domain names involved in this proceeding as well as by other parallel proceedings under the UDRP in which Respondent apparently has been a party (see e.g. *Philip Morris Products S.A. v. Xinke Liu*, WIPO Case No. [D2023-0378](#); *Philip Morris Products S.A. v. Xinke Liu*, WIPO Case No. [D2023-2157](#), and several more). Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(ii) of the Policy.

Based on the available record, the Panel, therefore, finds that Complainant has established the third element of the Policy, too.

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 names, <heetsheets.com>, <heetspro.com> as well as <heetsticks.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: April 23, 2024