

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mikhail Ivanov
Case No. D2024-0769

1. The Parties

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

The Respondent is Mikhail Ivanov, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <newheatsticks.com> (the “Domain Name”) is registered with Cosmotown, 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 Domain Name. On February 22, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant but providing contact details that differed to the ones included within the Complaint. The Center sent an email communication to the Complainant on February 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed amended Complaint on February 27, 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 the Respondent of the Complaint, and the proceedings commenced on February 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2024. Due to an apparent issue with the notification, on March 26, 2024, the Center granted the Respondent until April 1, 2024, to indicate whether the Respondent would like to participate to this proceeding. The Respondent did not submit any communication.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on April 2, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of Philip Morris International Inc. ("PMI"). PMI is an international tobacco company, with products sold in approximately 180 countries. PMI has developed a number of products, such as IQOS.

IQOS is a controlled heating device specially designed for tobacco products under the brand names HEETS or HEATSTICKS. The tobacco products are inserted and heated to generate a flavorful nicotine-containing aerosol. The IQOS system was first launched in 2014. The IQOS system is available in key cities in the world, and it has approximately 19.1 million consumers worldwide. It is almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers.

The Complainant has trademark registrations relating to its products, such as International Registration International Registration HEETS (word) No. 1326410 registered on July 19, 2016, and United States of America (US) HEATSTICKS registration No. 4758618 registered on June 23, 2015.

The Domain Name was registered on September 24, 2022. At the time of filing the Complaint, and at the time of drafting the Decision, the Domain Name resolved to a webpage linked to an online shop that refers or redirects to third party shops allegedly selling and offering the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant has registered trademark rights in HEETS and HEATSTICKS. The Complainant submits that the Domain Name is confusingly similar to the Complainant's trademarks. The Domain Name adopts the Complainant's trademarks. The addition of "new" does not prevent a finding of confusing similarity under the first element of the UDRP.

The Complainant asserts that the Respondent is unable to demonstrate rights or legitimate interests in the Domain Name. The Respondent has not been allowed by the Complainant to make any use of its trademarks. The Domain Name resolves to a webpage that does not meet the requirements for a bona fide offering of goods. The webpage uses the Complainant's trademarks and logos without authorization. Consumers are misled to falsely believe that the webpage under the Domain Name is endorsed by the Complainant. The website includes no proper information regarding the identity of the provider of the website.

The Complainant argues that the Respondent had knowledge of the Complainant and its products at the time of registration of the Domain Name. The Respondent registered and used the Domain Name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website.

By reproducing the Complainant's trademark in the Domain Name and on the webpage, the Respondent suggests the Complainant or an affiliated dealer is the source of the website. This is underlined by the Respondent's use of the Complainant's official product images.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue

The Registrar has indicated that the Respondent's mailing address is stated to be in Ukraine, subject to an international conflict at the date of this Decision that may impact case notification. Even if the Panel has noted that the Complainant argues that the Respondent or the person behind the Respondent is actually the same Respondent as in *Philip Morris Products S.A. v. Super Privacy Service LTD c/o Dynadot / Bobbi Kontozoglou*, WIPO Case No. [D2022-1468](#) and *Philip Morris Products S.A. v. Mikhail Ivanov, Bobbi Kontozoglou, Mikhail Ivanov* WIPO Case No. [D2023-1968](#), a respondent located in the US and/or Spain and/or Germany and/or the Russian Federation, the Panel finds it appropriate to consider whether the proceeding should continue based on the premise that the Respondent is situated in Ukraine.

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the courier was not able to deliver the written notice to the Respondent's address in Ukraine. However, the Notification of Complaint was delivered to the Respondent's email address provided by the Registrar without receiving any delivery failure response, and the Respondent has not opposed to the continuation of the proceedings.

The Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer the Domain Name shall be referred to the jurisdiction of the courts of the location of the concerned registrar, which is US.

Moreover, as described below, the Panel has no doubt that the Respondent registered and has used the Domain Name in bad faith to target the Complainant and mislead consumers.

6.2. Substantial Issues

A. Identical or Confusingly Similar

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 the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark HEATSTICKS. The Domain Name incorporates the Complainant's trademark with the addition of "new". The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark. [WIPO Overview 3.0](#), section 1.8. When assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name. While 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 often impossible 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. 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. The Respondent's use is not bona fide, but rather evidence of bad faith, see below. The webpage uses the Complainant's trademarks and logos without authorization. The website includes no proper information regarding the identity of the provider of the website. Finally, the Panel finds that the composition of the Domain Name carries a risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

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.

The Respondent knew of the Complainant when the Respondent registered the Domain Name. It follows from the composition and use of the Domain Name. The Respondent's use of the Domain Name is clear evidence of bad faith. Moreover, the Respondent has not offered any explanation to why it registered the Domain Name, nor provided any evidence of actual or contemplated good faith use of the Domain Name. It is implausible that the Respondent may put the Domain Name into any good faith use. The Domain Name website targeted Internet users in the US, despite the Complainant's products not currently being authorized for sale or marketing in the US, which further reinforces the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 the Domain Name <newheatsticks.com> transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: April 5, 2024