

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Dirk Zagers
Case No. D2024-4228

1. The Parties

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

The Respondent is Dirk Zagers, Germany.

2. The Domain Name and Registrar

The Disputed Domain Name <iqos-heets.shop> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 2024, 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 (Redacted For Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 17, 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 an amended Complaint on October 21, 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 November 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 26, 2024.

The Center appointed Meera Chature Sankhari as the sole panelist in this matter on December 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant Philip Morris Products S.A. is a company which is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as "PMI"). PMI is a leading international tobacco and smoke-free products company, with products sold in approximately 180 countries. PMI's brand portfolio contains brands like MARLBORO (outside of the United States of America and Canada), the world's number one international selling cigarette brand since 1972.

In time, the Complainant's business transformed from combustible cigarettes to Reduced Risk Products ("RRP"), PMI has developed a number of RRP products. One of these RRP products developed and sold by PMI is a tobacco heating system called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names HEETS, HEATSTICKS, DELIA, LEVIA or TEREJA are inserted and heated to generate a flavorful nicotine-containing aerosol (collectively referred to as the "IQOS System").

The Complainant owns a large portfolio of trademark registrations including the International Registration ("IR") covering multiple jurisdictions including Germany and in the United Arab Emirates ("UAE") for the marks IQOS (word) under IR No. 1218246 registered since July 10, 2014; the HEETS (word) mark under IR No. 1326410 registered on July 19, 2016; the IQOS (device) mark under IR No. 1338099 registered since November 22, 2016 and the HEETS (device) mark under IR No. 1328679 registered since July 20, 2016. The Panel has verified that the Complainant owns registrations for the mark IQOS (device) under IR No. 211143 registered since March 16, 2016 and for the mark HEETS (device) under IR No. 256863 registered since December 25, 2017 in the UAE, seemingly being the targeted region by the Respondent at least towards the early stages of the Complaint.

The Complainant noticed on September 25, 2024 that the website at "www.iqos-heets.shop", was allegedly selling and offering the Complainant's IQOS System. The Disputed Domain Name was registered on August 3, 2024. The website appearing on the Disputed Domain Name, as on 25 September 2024, was indicating all prices in UAE Dirham (AED) currency, as well as presenting an address located in Dubai (being a city in the UAE), indicating that the said website was/is directed to the UAE. The website appearing on the Disputed Domain Name was prominently using the Complainant's registered IQOS and HEETS trademarks and blatantly displaying the Complainant's official product images without the authorization of the Complainant, as was illustrated by the Complainant in the Complaint.

After 25 September 2024, the Disputed Domain Name resolved to / redirected to a third-party website at "www.good-vibe.world". On October 1, 2024, the website content located at the Disputed Domain Name changed again to resolve to a website for a beauty salon allegedly offering massage treatments at "www.iqos-heets.shop". At some point between October 1, 2024 until the filing of the Complaint, the website content located at the Disputed Domain Name changed again to a website that is "under construction" at "www.iqos-heets.shop".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the Disputed Domain Name wholly reproduces the Complainant's registered IQOS and HEETS trademarks, which are easily identifiable therein. The Complainant submits that the applicable Top Level Domain Name in a domain name is viewed as a standard registration requirement and is disregarded under the first element of confusing similarity.

The Complainant contends that the Respondent lacks any rights or legitimate interests in the Disputed Domain Name. The Complainant claims that it has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS and HEETS trademarks (or a domain name which will be associated with these trademarks). The Complainant submits that the Respondent's behavior shows a clear intent to obtain an unfair commercial gain and that the website provided under the Disputed Domain Name does not meet the requirements set out by numerous panel decisions for a bona fide offering of goods. In the present proceedings, the Disputed Domain Name in itself suggests at least an affiliation with the Complainant and its IQOS and HEETS trademarks, as the domain name wholly reproduces the Complainant's registered IQOS and HEETS trademarks and reproduced the official product images of the Complainant at some point prior to September 25, 2024.

The Complainant further claims that the website includes no information regarding the identity of the provider of the website, which is only identified as "IQOS-HEETS.SHOP" on the website, being a name which similarly includes the Complainant's registered IQOS and HEETS trademarks (without authorization) and further serves to perpetuate the false impression of an official commercial relationship between the website and the Complainant.

The Complainant claims bad faith on the part of the Respondent in adopting and using the Disputed Domain Name, including on the premise that the Respondent knew about the Complainant's IQOS and HEETS trademarks. The Complainant claims that the Respondent started offering the Complainant's IQOS System immediately after registering the Disputed Domain Name. Furthermore, the Complainant also submits that the terms "IQOS" and "HEETS" are purely imaginative terms and unique to the Complainant, which are not commonly used to refer to tobacco products or electronic devices. It is therefore beyond the realm of reasonable coincidence that the Respondent chose the Disputed Domain Name, without the intention of invoking a misleading association with the Complainant. The Complainant further claims that the Respondent registered and used the Disputed 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 registered IQOS and HEETS trademarks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith. That the Respondent reproduced the Complainant's trademarks in their entirety in the Disputed Domain Name and the title of their website, suggesting to any Internet user visiting a website provided under the Disputed Domain Name, as on September 25, 2024, that the Complainant (or an affiliated dealer of the Complainant) is the source of the website. The Respondent is further using the Complainant's official product images. The Complainant claims that the changes to the website(s) to which the Disputed Domain Name resolves further underscores the Respondent's bad faith as these differing types of use suggest some experimentation into the best way to exploit the Disputed Domain Name.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

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

The Complainant has shown rights in respect of trademark or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the marks are recognizable within the disputed domain name. Accordingly, the Disputed Domain Name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the 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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Complainant has demonstrated that it has neither authorized nor otherwise permitted the Respondent to use or register its trademarks, or to seek registration of any domain name incorporating said trademark.

The record shows that the Disputed Domain Name resolved to a website that displayed the Complainant's official product images without authorization. The website included no information regarding the identity of the provider of the site, which was only identified as "IQOS-HEETS.SHOP", being a name which similarly includes the Complainant's registered IQOS and HEETS trademarks.

Panels have held that the use of a domain name for illegitimate activity here claimed as creating a false impression of an affiliation with the Complainant, i.e., impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent started offering the Complainant's IQOS System immediately after registering the Disputed Domain Name. That the term "IQOS" and "HEETS" are purely imaginative terms and unique to the Complainant, which are not commonly used to refer to tobacco products or electronic devices. Therefore, it does not seem like a reasonable coincidence that the Respondent chose the Disputed Domain Name, without the intention of invoking a misleading association with the Complainant.

That the Respondent must have known of the Complainant's registered IQOS and HEETS trademarks before registering and using the Disputed Domain Name. Thus, the Panel concurs with the Complainant that the Disputed Domain Name was registered with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered IQOS and HEETS trademarks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Respondent's unauthorized registration and utilization of the Disputed Domain Name, offering the Complainant's IQOS System and subsequently also redirecting users to third party websites, inherently seeks to cause harm or gain commercially. Thus, such actions are deemed as bad faith registration and use.

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 that the Disputed Domain Name <iqos-heets.shop> be transferred to the Complainant.

/Meera Chature Sankhari/

Meera Chature Sankhari

Sole Panelist

Date: December 16, 2024