

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Saeed Zarrabian
Case No. DIR2022-0004

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by Saba & Co. Intellectual Property s.a.l. (Offshore) Head Office, Lebanon.

The Respondent is Saeed Zarrabian, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain names <heetsmarket.ir>, <iqosmaster.ir>, <iqosstyle.ir>, and <iqostehroon.ir> are registered with IRNIC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 11, 2022. On February 14, 2022, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain names. On February 16, 2022, IRNIC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the “Policy” or “irDRP”), the Rules for .ir Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 22, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was March 14, 2022. On March 16, 2022, the Center notified the Respondent’s default.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 28, 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. (hereinafter referred to as "PMI"), an international tobacco conglomerate that sells tobacco products in approximately 180 countries of the world.

One of its products is the IQOS system, a precisely controlled heating device into which specially designed tobacco products under the trademarks HEETS or HEATSTICKS are inserted and heated to generate flavorful nicotine-containing aerosol. Such products are being marketed in key cities in around 66 markets across the world through official IQOS stores and websites, and selected authorized distributors and retailers.

The Complainant owns among others the following trademarks:

- International registration No. 1218246 for the word mark IQOS, registered on July 7, 2014, in classes 9, 11, and 34; and
- International registration No. 1328679 for the device mark HEETS, registered on July 20, 2016, in classes 9, 11, and 34.

The disputed domain names <heetsmarket.ir> and <iqostehroon.ir> currently do not resolve to active webpages. The disputed domain name <iqosmaster.ir> redirects Internet users to the webpage available at <webzi.ir> related to website development, and the disputed domain name <iqosstyle.ir> is used in connection with an online shop offering IQOS and HEETS products.

5. Parties' Contentions

A. Complainant

The Complainant claims to have developed the IQOS system, first launched in Nagoya, Japan in 2014.

Asserting to have invested over USD 8.1 billion in extensive international sales and marketing efforts to promote its IQOS system, the Complainant states that its new product has obtained considerable international success and reputation, approximately having 19.1 million relevant consumers worldwide.

According to the Complainant, at the time of the filing of this Complaint, the disputed domain names <iqosstyle.ir> and <iqosmaster.ir> were linked to active online shops offering, without any authorization from the Complainant, IQOS and HEETS products, the disputed domain name <iqostehroon.ir> had been linked to an active online shop also offering IQOS and HEETS products, which however was withdrawn in view of a legal notice sent by the Complainant on August, 2021, and the disputed domain name <heetsmarket.ir> redirected to the website connected with the disputed domain name <iqosstyle.ir>.

Under the Complainant's view, the disputed domain names reproduce the Complainant's HEETS and IQOS trademarks in their entirety with the addition of terms ("market", "master", "style" and "tehroon") that are insufficient to differentiate them in any meaningful way.

Regarding the absence of the Respondents' rights or legitimate interests, the Complainant argues that:

- (i) the Respondent, named Saeed Zarrabian, has not been commonly known by the disputed domain names;
- (ii) the Respondent is not an authorized distributor or manufacturer of the Complainant's products and there has never been any business relationship whatsoever between the Parties, not having the Complainant sponsored or endorsed the Respondent's activities in any respect, also not having the Complainant consented to the Respondent's use and exploitation of the Complainant's trademarks in the disputed domain names; and

(iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, rather showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant.

As to the registration and use of the disputed domain names in bad faith, the Complainant states that the Respondent knew of the Complainant's trademarks when registering the disputed domain names, having reproduced photographs of the Complainant's products in the webpages relating to part of the disputed domain names. The Complainant also indicates that the Respondent failed to respond to a warning letter sent on September 27, 2021, based on the Complainant's request asking the Respondent to transfer the disputed domain names to the Complainant. Lastly, the Complainant points out that the purpose of the Respondent's registration of the disputed domain names was to attract, for commercial gain, Internet users to the websites 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 websites.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered or are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain names.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights over the HEETS and IQOS trademarks.

The disputed domain name <heetsmarket.ir> incorporates the Complainant's HEETS trademark in its entirety, whereas the disputed domain names <iqosmaster.ir>, <iqosstyle.ir>, and <iqostehroon.ir> incorporate the Complainant's IQOS trademark in its entirety and are all thus confusingly similar therewith; the addition of the terms "market", "master", "style", and "tehroon" not avoiding a finding of confusing similarity under the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third edition ("[WIPO Overview 3.0](#)"), section 1.8¹. Furthermore, the resolution to an online shop where the Complainant's product images are also reproduced affirms a finding of confusing similarity between the disputed domain names and the Complainant's IQOS and HEETS trademarks. The Panel notes it appears

¹ The Panel follows prior decisions under the irDRP and, given the similarities between the irDRP and the Uniform Domain Name Resolution Policy ("UDRP"), finds it appropriate to refer to UDRP jurisprudence, including reference to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"). See *Inter IKEA Systems BV (IISBV) v. Mohammadreza Mohammadian*, WIPO Case No. DIR2018-0003.

prima facie that the Respondent is seeking to target the Complainant's IQOS and HEETS trademarks through the disputed domain names. See [WIPO Overview 3.0](#), section 1.15.

For the reasons above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondents' rights or legitimate interests in the disputed domain names. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain names, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent which has not been commonly known by the disputed domain names and neither is an authorized reseller of the Complainant's IQOS system, nor has it been licensed or otherwise permitted to use any of the Complainant's trademarks or to register a domain name incorporating its IQOS or HEETS trademarks.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain names in connection with online shops reproducing the Complainant's IQOS trademark, together with the unauthorized reproduction of the Complainant's official marketing product images, clearly suggests at least an affiliation with the Complainant which in fact does not exist.

Such use does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain names in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

In this case, both the registration and use of the disputed domain names in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the reproduction of the IQOS and HEETS trademarks, as well as the

online shop that was available at the websites relating to the disputed domain names, together with the unauthorized reproduction of the Complainant's official product images, which create a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof. As regards the change in use with respect a few of the disputed domain names, two of which no longer resolve, the Panel finds that such change in use reinforces the Panel's finding on bad faith, since it illustrates the lack of good-faith explanation or intention for which the Respondent originally hosted the infringing web stores at the disputed domain names. Moreover, as explained under section 3.3 of the [WIPO Overview 3.0](#), under the circumstances of this case, the current passive holding of two of the disputed domain names does not prevent a finding of bad faith.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names.

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 <heetsmarket.ir>, <iqosmaster.ir>, <iqosstyle.ir>, and <iqostehroon.ir> be transferred to the Complainant.

/Wilson Pinheiro Jabur/
Wilson Pinheiro Jabur
Sole Panelist
Date: March 31, 2022