

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. BehruzHusanov, Heetsfiyat
Case No. D2022-2951

1. The Parties

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

The Respondent is BehruzHusanov, Heetsfiyat, United States of America.

2. The Domain Name and Registrar

The disputed domain name, <heetsfiyat.com> (the “Domain Name”), is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2022. On August 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 2022, 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 August 12, 2022.

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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2022.

The Center appointed Tony Willoughby as the sole panelist in this matter on September 29, 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the Domain Name was registered in the name of a privacy service. In response to the Center's registrar verification request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

4. Factual Background

The Complainant is a member of the group of companies headed by Philip Morris International Inc., a leading international tobacco company. In addition to its core business of production and sale of combustible cigarettes, the Complainant has, since 2014, commenced the production and sale of non-combustible alternatives, which it markets under the trade marks IQOS and HEETS.

The Complainant is the registered proprietor of numerous trade mark registrations covering those trade marks. For present purposes it is only necessary to cite two of them, namely International Registrations covering Türkiye, the home jurisdiction of the Respondent:

International Registration No. 1218246 IQOS (word) registered July 10, 2014, in classes 9, 11 and 34, for *inter alia* batteries for electronic cigarettes, electronic vaporizers and tobacco products.

International Registration No. 1326410 HEETS (word) registered July 19, 2016, in classes 9, 11 and 34, for a similar range of goods.

The Domain Name was registered on July 15, 2022, and is connected to a Turkish language online shop appearing to be offering for sale the Complainant's IQOS and HEETS products. The homepage features "HETS [*sic*] IQOS" at the top left corner and a heading in Turkish reading "HEETS İQOS SATIŞ MAĞZASINA HOŞ GELDİNİZ" (meaning "Welcome to the HEETS IQOS Shop" in Turkish). It also features images of the Complainant's HEETS products and a 2022 copyright notice crediting "HETS [*sic*] IQOS" as the copyright proprietor.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Complainant's HEETS registered trade mark; that the Respondent has no rights or legitimate interests in respect of the Domain Name; and that the Domain Name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

B. Identical or Confusingly Similar

The Domain Name comprises the Complainant's registered trade mark HEETS, the Turkish word, "fiyat" (meaning "price" in English) and the ".com" generic Top Level Domain identifier.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The Complainant's HEETS registered trade mark is readily recognizable in its entirety in the Domain Name. The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

C. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name for, amongst others, the following reasons:

First, the Complainant has no association with the Respondent and has given the Respondent no permission to use its HEETS trade mark;

Secondly, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name. The Respondent is not an authorised reseller of the Complainant's products. Indeed, the Complainant does not currently sell its IQOS System in Türkiye.

Thirdly, the Domain Name, featuring as it does the Complainant's HEETS trade mark in combination with the non-distinctive word "fiyat" ("price" in English) is itself likely to mislead Internet users into believing that the website to which it is attached is a website of or authorised by the Complainant.

Fourthly, the absence on the website of any name (other than the confusingly similar name "HETS IQOS") to indicate the operator of the website, combined with the numerous official product images of the Complainant's IQOS and HEETS products contributes to the false impression that the website is a website of or associated with

the Complainant.

The Complainant recognises that there can be circumstances under which it is permissible for a reseller of goods to use in a domain name the brand name of the product that it is reselling, but the use must be fair and must, amongst other things, accurately indicate its relationship with the trade mark owner (section 2.8.1 of [WIPO Overview 3.0](#)). The Complainant contends that the website does not accurately disclose the Respondent's relationship with the Complainant. The Complainant contends that both the Domain Name and the Respondent's website falsely indicate an association with the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, in other words, a case calling for an answer from the Respondent. The Respondent has failed to provide an answer.

In the absence of any explanation from the Respondent, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances, which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The Complainant relies upon sub-paragraph (iv), which provides: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

On the evidence before the Panel it seems clear to the Panel that the Domain Name is on its face deceptive in that it indicates, as the Panel has found in 6C, that it and any website to which it is connected is likely to be associated in some way with the Complainant. The website itself contains nothing to dispel that impression.

It seems inconceivable to the Panel that the Respondent can have any satisfactory explanation for its registration and use of the Domain Name. The Respondent has had an opportunity of providing an explanation, but has declined to do so. In the absence of any explanation from the Respondent, the Panel finds on the balance of probabilities that it registered the Domain Name for the purpose for which it is using it, namely to attract in traffic to its website from visitors expecting to arrive at a website of or authorised by the Complainant.

The Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <heetsfiyat.com>, be transferred to the Complainant.

/Tony Willoughby/

Tony Willoughby

Sole Panelist

Date: September 30, 2022