

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mohammad Emon Uddin, uaeheets.com
Case No. D2022-3326

1. The Parties

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

Respondent is Mohammad Emon Uddin, uaeheets.com, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <uaeheets.com> 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 September 7, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 9, 2022, 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 September 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").

The Center received Respondent's first informal communication on September 14, 2022. In response, Complainant filed a Request to Suspend Proceedings on September 15, 2022. Accordingly, the Center notified the Parties Notification of Suspension (before commencement). The Center received the second informal communication from Respondent on September 15, 2022. The Center notified the end of Suspension on October 20, 2022 and the Reinstitution of Proceeding on October 24, 2022.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on October 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022. Respondent did not submit a formal response. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on November 14, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 21, 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

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 brand HEETS, *inter alia*, but not limited to the following trademarks which enjoy protection for the territory of the United Arab Emirates:

- word mark HEETS, United Arab Emirates Ministry of Economy, registration number: 256864, registration date: December 25, 2017, status: active; and
- word/device mark HEETS, United Arab Emirates Ministry of Economy, registration number: 256867, registration date: December 25, 2017, status: active.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of the United Arab Emirates who registered the disputed domain name on August 4, 2022. By the time of the rendering of this decision, the disputed domain name does not resolve to any content on the Internet. Complainant, however, has demonstrated that by the time of the filing of the Complaint, the disputed domain name resolved to a website at “www.uaeheets.com” promoting an online shop allegedly selling and offering Complainant’s tobacco heating system called IQOS as well as competing third-party tobacco products of other commercial origin, thereby prominently displaying Complainant’s HEETS trademark and official logo.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant submits to be since decades a leading international tobacco and smoke-free products company, and that its products including its IQOS system have meanwhile achieved considerable international success and reputation.

Complainant contends that the disputed domain name is confusingly similar to its HEETS trademark as it identically adopts the latter simply added by the geographical abbreviation for the United Arab Emirates, *i.e.* “uae”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name 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 trademark (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, the website under the disputed domain name is selling competing tobacco products and it is not meeting the

so-called *Oki Data* requirements). 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 name that it knew of Complainant's HEETS trademark when registering the disputed domain name, (2) the term HEETS is purely imaginative and it is beyond the realm of reasonable coincidence that Respondent chose the disputed domain name without the intention of invoking a misleading association with Complainant, and (3) Respondent is not only using Complainant's HEETS trademark for purposes of offering for sale the IQOS system, but also for purposes of offering for sale third-party competing products of other commercial origin.

B. Respondent

Respondent neither did submit a formal response nor did it bring forward anything in substance in its informal communication sent to the Center on September 14 and 15, 2022, that would have allowed the Panel to draw conclusions therefrom supporting Respondent's position.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's formal default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name <uaeheets.com> is confusingly similar to the HEETS trademark in which Complainant has rights.

The disputed domain name incorporates the HEETS trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, 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 trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions, and has become a consensus view among UDRP panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether e.g. geographic or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the geographic term "uae" (being the three-letter country code for the United Arab Emirates, where Respondent is located) does not dispel the confusing similarity arising from the incorporation of Complainant's entire HEETS trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent

has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's HEETS trademark, 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" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, obviously ran a website under the disputed domain name at "www.uaeheets.com" promoting an online shop allegedly selling and offering Complainant's tobacco heating system called IQOS as well as competing third-party tobacco products of other commercial origin, thereby prominently displaying Complainant's HEETS trademark and official logo without Complainant's permission to do so. Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has neither submitted a formal Response nor has brought forward any contentions otherwise that would have allowed the Panel to draw conclusions therefrom supporting Respondent's position, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant's rights in the HEETS trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is confusingly similar to Complainant's HEETS trademark, to run a website promoting an online shop allegedly selling and offering Complainant's tobacco heating system called IQOS as well as competing third-party tobacco products of other commercial origin, thereby prominently displaying Complainant's HEETS trademark and official logo, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's HEETS trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. 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.

In this context, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain names since, according to the Case File, the Center could not formally enter a valid postal address provided for Respondent into the DHL system for placing postal courier orders, which is why the Written Notice on the Notification of Complaint dated October 19, 2022 could neither be sent nor delivered to Respondent. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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 <uaeheets.com> be transferred to the Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: December 12, 2022