

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Ali Tarkan Tatlı
Case No. D2023-2736

1. The Parties

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

The Respondent is Ali Tarkan Tatlı, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <heetsmarketi.com> is registered with ODTÜ Geliştirme Vakfı Bilgi Teknolojileri Sanayi ve Ticaret Anonim Şirketi (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2023. On June 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 2023, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 29, 2023, 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 June 29, 2023.

The Center sent an email communication in English and Turkish to the parties on June 29, 2023, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on June 29, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Turkish of the Complaint, and the proceedings commenced on July 5, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was July 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 26, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 2, 2023. 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. group, which is a group of companies active in the field of tobacco and smoke-free products.

The Complainant owns various word and figurative HEETS trademark registrations around the world, including in Türkiye, where the Respondent is reportedly located at. According to the Complaint, the Complainant is, *inter alia*, the registered owner of the International Trademark Registration No. 1328679 (registered on July 20, 2016) and No. 1326410 (registered on July 19, 2016) for HEETS, both designating Türkiye and providing trademark protection, *inter alia*, for electronic cigarettes as covered in classes 9, 11, and 34 (hereinafter collectively referred to as "HEETS trademark") (Annexes 6 and 7 to the Complaint).

The disputed domain name was registered on April 28, 2023.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in the Turkish language, which is used for purportedly offering various kinds of smoke-free products of the Complainant and third parties (Annex 8 to the Complaint). On the website, the HEETS trademark of the Complainant as well as its other trademarks, and various of its official product images are used without any visible disclaimer describing the (lack of) relationship between the Parties.

5. Parties' Contentions

A. Complainant

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

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceedings, even though communicated in Turkish and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that also this opportunity remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the HEETS trademark by virtue of various trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds the mark is recognizable within the disputed domain name. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. In the present case, the Panel notes that the disputed domain name incorporates the Complainant's HEETS in addition to the term "marketi" (which is Turkish and means "market for" in the English language). In view of the Panel, this addition still makes the Complainant's HEETS trademark recognizable within the disputed domain name.

The Panel concludes that the disputed domain name is confusingly similar to the HEETS trademark for the purposes of the Policy.

Accordingly, 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.

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.

Having reviewed the 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 Panel particularly finds that the Respondent cannot be assessed as a legitimate dealer for the Complainant’s products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“*Oki Data*”) and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Oki Data* are not fulfilled in the present case. The Panel notes that the Respondent offers not only products of the Complainant but also competing third party products of other commercial origin (Annex 8 to the Complaint). Additionally, the website which was linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the Respondent might be an official and authorized reseller/distributor for the Complainant’s products in Türkiye. This assessment is particularly supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). In view of the Panel, all this takes the Respondent out of the *Oki Data* safe harbour for purposes of the second element.

Based on the available record, 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, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its smoke-free products. After having reviewed the Complainant’s screenshots of the website associated to the disputed domain name (Annex 8 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website. The Panel particularly notes that the Respondent has not published a visible disclaimer on its website to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the prominent use of official product images of the Complainant and its other registered trademarks on the associated website as well as the inherently misleading nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant’s contentions as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have responded.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <heetsmarketi.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: August 16, 2023