Panel Decision for dispute CAC-ADREU-007871

Case number	CAC-ADREU-007871
Time of filing	2020-04-15 15:12:10
Domain names	heets-polska.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	

Respondent

Organization	PrivActually Ltd

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the disputed domain name <heets-polska.eu>.

FACTUAL BACKGROUND

The Complainant, Philip Morris Products S.A., a Swiss company established under the laws of Switzerland, is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as “PMI”).
PMI is one of the leading international tobacco companies, with products sold in approximately 180 countries.
In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”, which PMI defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products instead of continuing to smoke), PMI has developed a number of products. One of the RRPs developed and sold by PMI is branded Iqos. Iqos is a precisely-controlled heating device into which specially designed tobacco products marketed under the brand names “HEETS” and “HeatSticks” are inserted and then heated to generate a flavorful, nicotine-containing aerosol.
The Iqos products were first launched by PMI in Nagoya, Japan in 2014. Today Iqos products are available in key cities in around 51 markets across the world. As a result of a USD 6 billion investment and extensive international sales and marketing efforts (in accordance with local laws), Iqos products have achieved considerable international success and reputation, and approximately 8.8 million relevant consumers have switched to using Iqos products worldwide.
The Complainant has proven to be the owner of the IQOS and HEETS marks.
The Complainant is inter alia the owner of:
- International Registration HEETS (word/device) No. 1328679 registered on July 20, 2016;
- International Registration HEETS (word) No. 1326410 registered on July 19, 2016.
The disputed domain name was registered by the Respondent on October 23, 2019.
The Complainant’s trademark registrations predate the registration of the disputed domain name.
The disputed domain name is linked to an online-shop offering the Complainant’s HEETS products (hereinafter referred to as the “Website”).
The content of this website is in Polish.

A. COMPLAINANT

The complainant contends:

That it is the owner of many trademark registrations and applications for HEETS. In order to prove this the Complainant has enclosed with the complaint a list of HEETS Trademarks filed and/or registered in its name;

That the disputed domain name reproduces the HEETS trademark in its entirety along with the non-distinctive geographical indicator "polska", merely indicating the geographic market targeted by the Respondent's website, namely Poland;

That the Respondent's website appears to suggest that the Respondent is an official dealer of the HEETS products, affiliated with the Complainant;

That the Respondent is prominently using the Complainant's HEETS trademark within the disputed domain name accompanied by the descriptive geographic indication "polska" (Poland), confusing relevant consumers into believing that the Website is an official or endorsed website for HEETS-branded products in Poland;

That the Respondent's website furthermore prominently uses the Complainant's registered HEETS trademark accompanied by the descriptive geographic indication "polska" (Poland) at the top left of all pages of the website, this being where relevant consumers usually expect to find the name of the online shop and/or the name of the provider of the Website;

That the Respondent is not commonly known by the disputed domain name;

That the Respondent has no rights to the disputed domain name, has no relationship with the Complainant and has never been authorized to use the HEETS trademark by the Complainant;

That the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, in order to misleadingly divert consumers or to tarnish the trademarks of the Complainant;

That in the Privacy Policy as well as in the Terms and Conditions provided on the Respondent's website the website provider is indicated as "Heets Polska Spółka z ograniczoną odpowiedzialnością sp.k." ("Heets Polska Limited Company sp.k."). In addition to the fact that this company name illegitimately uses the Complainant's HEETS trademark together with the geographic indication "Polska" (Poland), the website does not provide any information about the identity of the website provider and its relationship to the Complainant (or clear lack thereof) and its HEETS trademark;

That, for the above reasons, any relevant consumer visiting the Respondent's website will falsely believe that this website is provided by the Complainant or one of the Complainant's Polish affiliate companies; and

That the Respondent has registered the disputed domain name in bad faith with the intention of attracting Internet users who expected to reach a website corresponding to the Complainant's products, to another variety of services, by creating a likelihood of confusion with the Complainant's trademark.

B. RESPONDENT

The Respondent did not file a reply.

DISCUSSION AND FINDINGS

To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Commission Regulation (EC) No. 874/2004 have been complied with. That paragraph reads as follows:
"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:
(a) has been registered by its holder without rights or legitimate interest in the name; or
(b) has been registered or is being used in bad faith."
In addition, Article 22(10) of the Regulation and Paragraph B10(a) of the ADR rules provide that:
"In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party".
The Complainant has provided sufficient evidence that it is the proprietor of many trademark registrations for the name HEETS, which was registered before the disputed domain name.
The disputed domain name <HEETS-POLSKA.EU> is a combination of the HEETS trademark and the geographic term POLSKA (Poland). This Panel is of the opinion that, as previously considered in numerous decisions, the addition in a domain name of a generic, descriptive and/or geographic term to a trademark is not sufficient to avoid confusion.
The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).
The Complainant has further asserted that the Respondent is not known by the HEETS name and does not hold any exclusive rights or

rights of any nature to the disputed domain name.
These assertions are not contradicted by the Respondent. Should the Respondent have rights or legitimate interests to the disputed domain name, the Panel assumes that it would have advised the Panel of the same. As no response was filed, the Panel therefore accepts that the Respondent does not have rights or legitimate interests to the disputed domain name.
In the absence of any submission on the issue from the Respondent, the Complainant has satisfied the requirements of Article 21(1)(a). It is therefore not necessary to examine the Complainant's assertion of the Respondent's bad faith.
This Panel notes however that the Complainant has provided sufficient arguments to also indicate the Respondent's bad faith in registering and using the disputed domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the disputed domain name <HEETS-POLSKA.EU> be revoked.

PANELISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2020-04-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: heets-polska.eu

II. Country of the Complainant: Switzerland, country of the Respondent: Cyprus

III. Date of registration of the domain name: 23 October 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word and figurative trademark registered in many countries, International reg. No. 1328679, for the term HEETS, registered on 20 July 2016 in respect of goods and services in classes 9, 11 and 34.
2. word trademark registered in many countries, International reg. No. 1326410, for the term HEETS, registered on 19 July 2016 in respect of goods and services in classes 9, 11 and 34.

V. Response submitted: No

VI. The disputed domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
The Respondent is prominently using the Complainant's HEETS trademark within the disputed domain name accompanied by the descriptive geographic indication "polska" (Poland), confusing relevant consumers into believing that the Website is an official or endorsed website for HEETS branded products in Poland.

IX. Dispute Result: Revocation of the disputed domain name