



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

| | |
|---------------------------------|-----------------------------|
| Case No. | HK-2101542 |
| Complainant: | Philip Morris Products S.A. |
| Respondent: | 汇联无限（北京）信息技术有限公司 |
| Disputed Domain Name(s): | <heets.cc> |

1. The Parties and Contested Domain Name

The Complainant is Philip Morris Products S.A., of Quai Jeanrenaud 3, 2000 Neuchatel, Switzerland.

The Respondent is : 汇联无限（北京）信息技术有限公司 (沈家峰) (hui lian wu xian (bei jing) xin xi ji shu you xian gong si (Jeffrey sen)), of 北京朝阳区祥业大厦 801 100020.

The domain name at issue is <heets.cc>, registered by Respondent with Alibaba Cloud Computing Co., Ltd., of email addresses DomainDisputes@service.aliyun.com and DomainAbuse@service.aliyun.com.

2. Procedural History

20 September 2021 – Simone Intellectual Property Services Asia Limited (“SIPS”), representative of the Complainant to the Disputed Domain Name submitted the complaint and evidence together with the receipt of payment of the case filing fees to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre” or “ADNDRC”).

21 September 2021 – the Centre sent an email to Alibaba Cloud Computing Co., Ltd (the “Registrar”), the registrar of the Disputed Domain Name, notifying that it has received a complaint against the Disputed Domain Name and asking for confirmation of whether it is the registrar of the Disputed Domain Name; the identity of the registrant; whether the ICANN Uniform Domain Name Dispute Resolution Policy (the “Policy”) is applicable; the language of the Registration Agreement; the registration and expiration date of the Disputed Domain Name; and confirmation to lock and withhold from transferring the

Disputed Domain Name; and the WHOIS information regarding the Disputed Domain Name.

21 September 2021 – the Centre sent an email to SIPS acknowledging receipt of the Complaint and asking it to settle the case filing fee in accordance with Paragraph 19(c) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”) and Article 15 of the ADNDRC Supplemental Rules (the “**Supplemental Rules**”).

21 September 2021 – the Centre resent the verification request to the Registrar with copy the administrative and technical contacts of the Disputed Domain Name.

22 September 2021 – the Registrar replied to the Centre confirming that it is the Registrar; that the Respondent is the registrant of the Disputed Domain Name; the WHOIS data; that UDRP is incorporated into the registration agreement and applies to the Disputed Domain Name; the expiry date of 22 March 2022 for the Disputed Domain Name; that deletion, transfer and update of the Disputed Domain Name are prohibited; that Chinese is the language of the registration agreement and the registration date of 22 March 2021 for the Disputed Domain Name.

23 September 2021 – the Centre sent an email to SIPS to confirm that the language of the Registration Agreement of the Disputed Domain Name is Chinese, and that according to Article 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, and to submit its response regarding the language of the proceedings.

23 September 2021 – Notification of deficiencies was issued to SIPS that the information of the Respondent in the Complaint is different from the WHOIS information provided by the Registrar and asking it to rectify the deficiency by updating the information in the Compliant Form.

24 September 2021 – SIPS submitted the revised Complaint Form to the Centre.

27 September 2021 – the Centre confirmed receipt of the updated Complaint in Chinese from SIPS.

27 September 2021 – SIPS sent an email to the Centre to reiterate its preference to use English as the language of proceedings.

27 September 2021 – the Centre confirmed that the Complaint is in administrative compliance with the Policy.

27 September 2021 - the Centre notified and provided the Respondent with a copy for the Complaint and Annexes received in respect of the Complaint filed against the Disputed Domain Name pursuant to the Policy adopted by the Internet Corporation for Assigned

Names and Numbers (ICANN) on 24 October 1999 and the Rules, and requested that the Respondent submits his Response to the Centre on or before 17 October 2021.

27 September 2021 – the Centre sent an email to the Respondent to correct a typo in the previous correspondence.

27 September 2021 – the Centre sent an email to the Respondent to seek its response with regard to the Complainant's request that the proceedings be conducted in English on or before 2 October 2021.

30 September 2021 – the Centre confirmed receipt of the case filing fee from the Complainant.

18 October 2021 – the Centre notified the Complainant and Respondent that it did not receive a Response from the Respondent in respect of the Complaint and that it will proceed to appoint a Panelist for the dispute of the Disputed Domain Name (the "**Dispute**").

18 October 2021 – the Centre sent an email to Peggy Cheung requesting if she would accept the appointment as the sole Panelist for the Dispute.

20 October 2021 – the Centre issued a follow up email to Peggy Cheung.

20 October 2021 – Peggy Cheung replied to the Centre confirming her acceptance of the appointment as the sole Panelist for the Dispute.

20 October 2021 – the Centre confirmed the appointment of Peggy Cheung as the sole panelist of the Dispute.

3. Factual background

Complainant's Background Information

The Complainant is Philip Morris Products S.A., of Quai Jeanrenaud 3, 2000 Neuchatel, Switzerland.

Respondent's Background Information

The Respondent is 汇联无限（北京）信息技术有限公司 (沈家峰) (hui lian wu xian (bei jing) xin xi ji shu you xian gong si (Jeffrey sen)), of 北京朝阳区祥业大厦 801 100020.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:


i. Complainant's Background



The Complainant Philip Morris Products S.A. is a company that is part of the group of companies affiliated with Philip Morris International Inc. (jointly referred to as "PMI"). PMI is a leading international tobacco and smoke-free products company, with products sold in more than 180 countries. PMI's unequalled brand portfolio contains brands such as MARLBORO (outside of the United States and Canada), the world's number one selling cigarette brand since 1972.

PMI is known for innovating across its brand portfolio. 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 versus continued smoking), PMI has developed a number of RRP products. One of these RRPs developed and sold by PMI is called IQOS. IQOS is a precisely controlled heating device into which specially designed tobacco sticks under the brand names "HEETS", "HeatSticks" or "TEREA" are inserted and heated to generate a flavourful nicotine-containing aerosol (collectively referred to as the "IQOS System"). There are 5 versions of the IQOS heating device currently available: the IQOS 2.4/IQOS 2.4+ pocket charger and holder, IQOS 3 pocket charger and holder, IQOS 3 Multi device, IQOS 3 DUO/DUOS and IQOS ILUMA. The IQOS System was first launched by PMI in Nagoya, Japan in 2014 and has obtained an extraordinary 20% share of the market in Japan. Today the IQOS System is available in key cities in around 67 markets across the world. As a result of an investment of over US\$8.1 billion into the science and research of developing smoke-free products and extensive international sales (in accordance with local laws), the IQOS System has achieved considerable international success and reputation, and approximately 19.1 million relevant consumers using the IQOS System worldwide. To date, the IQOS System has been almost exclusively distributed through PMI's official IQOS stores and websites and selected authorized distributors and retailers.

ii. Complainant's Trademarks

For its new innovative smoke-free products the Complainant owns a large portfolio of well-known trademarks. Among them, but by no means limited to, are the following trademark registrations in China:

| HEETS Trademark | Reg. No. | Class | Reg. Date |
|--|-----------------|--------------|------------------|
| HEETS (Word Mark) | 3298004 | 34 | 14 May 2019 |
|  (Logo Mark) | 37632262 | 34 | 7 January 2020 |

| IQOS Trademark | Reg. No. | Class | Reg. Date |
|--|-----------------|--------------|------------------|
|  (Logo Mark) | 16314287 | 34 | 14 May 2016 |
| IQOS (Word Mark) | 16314286 | 34 | 14 May 2016 |
|  | G1329691 | 9, 11, 34 | 2 February 2017 |

B. Respondent

The Respondent has failed to file any Response to the Complaint and the request for change of the language of proceedings to English before the deadline dates stipulated by the Centre and notified to the Respondent.

5. Findings

A. Language of Proceedings

According to Article 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, and to submit its response regarding the language of the proceedings.

As confirmed by the Registrar, the language of the Registration Agreement of the Disputed Domain Name is Chinese.

The Complainant submits a request for the language of the proceedings to be in English for the following reasons:

- (a) the Disputed Domain Name is made up exclusively of the Latin script “heets”;
- (b) the commission of a translator would add unnecessary costs to the Complainant, which already bears the cost of filing and will cause delay in commencement of the proceedings; such action is contrary to intentions of the Policy’s drafters to provide a cost-effective and expedited resolution process; and
- (c) in compelling the Complainant to translate and submit this complaint in Chinese, the Panel would not be acting in keeping with the overriding principles in Paragraph 10 of the UDRP Rules, in particular 10(b)—that the parties should be treated equally and given a fair opportunity to present their case and 10(c)—which preserves the time span of the process.

Based on the submissions from the Complainant, and the absence of any response or objections from the Respondent to the Complainant’s request to use English as the language of proceedings for this dispute, the panel determines that the use of English as the language of these proceedings would provide a cost-effective and expedited resolution process and furthermore, given the failure of the Respondent to file its response to the Complaint, the Respondent would not be treated unequally and not be given a fair opportunity to present its case within the time span of the process as a result of the panel’s determination to use English at this stage of the proceedings.

- B. The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:
 - i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
 - ii. Respondent has no rights or legitimate interests in respect of the domain name; and
 - iii. Respondent’s domain name has been registered and is being used in bad faith.

i) Identical / Confusingly Similar

The Disputed Domain Name heets.cc to be confusingly similar to its HEETS Trademark.

First of all, there is no doubt that the Disputed Domain Name contains the Complainant’s HEETS Trademark in its entirety. Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the [presence of] other terms in the domain name”.

In addition, a simple keyword search on Baidu for “HEETS” reveals that the vast majority (if not all) of the results on the first three pages are related directly to the

Complainant and the HEETS portion of its IQOS System. This fully supports the Complainant's assertion that as a brand, HEETS has acquired substantial fame and recognition in China and demonstrates that there is a high degree of actual public (e.g., relevant consumer, industry, media) recognition between the HEETS Trademark and the Complainant, with a clear corresponding relationship tying the two together in the public's view. Moreover, the Complainant and its registered HEETS Trademark enjoy a widespread reputation in China and the world with regards to its HEETS products.

The Complainant and its registrations of the HEETS Trademark pre-date the date of registration of the Disputed Domain Name and enjoy a widespread reputation connected with the promotion and sales of the IQOS System. Therefore, when the public / relevant consumers encounter the Disputed Domain Name, it is very likely that they will wrongly consider the Disputed Domain Name "heets.cc" as having originated from the Complainant's registered HEETS Trademark. Hence, the public / relevant consumers will likely conclude that the website associated with the Disputed Domain Name belongs to the Complainant or at the very least, is closely connected with or authorized by the Complainant. The Disputed Domain Name will create the misapprehension that the Respondent is authorized by the Complainant to offer its products or services via the Disputed Domain Name, which will result in public confusion.

Based on the above, it is the panel's opinion that the Disputed Domain Name is confusingly similar to the registered Trademarks owned by the Complainant, which is likely to cause confusion. The Complainant's reasoning is wholly in accord with Section 4(a)(i) of UDRP.

ii) Rights and Legitimate Interests

The Complainant has not licensed or otherwise authorized the Respondent to use its HEETS Trademark or to register any domain name incorporating its HEETS Trademark. Accordingly, the Respondent does not have any legitimate interest in the Disputed Domain Name. In spite of that, the Respondent has blatantly and obviously incorporated the entirety of the Complainant's HEETS Trademark into the Disputed Domain Name when registering the same.

The misleading nature of the Respondent's unauthorized use of the Complainant's registered HEETS Trademark is further amplified by the fact that the Complainant has not yet commercialized its HEETS products and/or the IQOS System in China, while the website under the Disputed Domain Name suggests to relevant consumers that the IQOS-related information and news are officially being provided by the Complainant—via the Respondent—in China.

Accordingly, in light of the above, there clearly is no legitimate non-commercial or fair use of the Disputed Domain Name being made by the Respondent, and the Disputed Domain Name was clearly registered for the sole purpose of trading off the

Complainant's HEETS Trademark and the goodwill and reputation associated with the HEETS Trademark.

Accordingly, the panel concludes that the Respondent does not have any right or legitimate interest in the Disputed Domain Name, and the Complainant's case complies with Section 4(a)(ii) of UDRP.

iii) Bad Faith

The Respondent registered the Disputed Domain Name as a part of a broad and wide-ranging scheme (described in detail below) to unfairly associate itself with the Complainant and its IQOS System, as well as services related to them (services which are being provided by the Respondent without the Complainant's authorization).

First of all, the Respondent has maliciously registered the Disputed Domain Name with clear knowledge of the Complainant's prior registration of its HEETS Trademark.

Furthermore, the Complainant's IQOS Trademark has achieved a high degree of reputation and recognition amongst relevant consumers on a global basis and are already well-known, including in the Greater China Region, through the Complainant's long-term and extensive promotion (in strict accordance with local laws) and use. Given the reputation of the IQOS Trademark, the Respondent is fairly assumed to have full knowledge of the Complainant's IQOS System and the HEETS products. Based on the above, it is the panel's view that the Respondent's use of "HEETS" in the Disputed Domain Name simply cannot be considered a coincidence.

Secondly, and to further underline the Respondent's awareness of the Complainant's products and trademarks, it has come to the Complainant's attention that the Respondent has also set up and has been operating a website associated with that Disputed Domain Name on which extensive use of the HEETS Trademark and IQOS Trademark are being made. On that same website, and to further draw a connection in relevant consumers' minds between the Disputed Domain Name and the associated website on the one hand, and the Complainant and the products of its IQOS System on the other, unauthorized use is also being made of copyright-protected materials created by and belonging to the Complainant and its affiliates. This also unfairly rides on the Complainant's fame and reputation and is a clear effort to create the false impression that the Respondent's business is associated with or supported, authorized or endorsed by the Complainant. The infringing conduct of the Respondent in that regard includes the direct use of the Complainant's copyright-protected stylized IQOS trademark and the direct copying of various of the Complainant's copyright-protected marketing materials.

In addition to copyright infringement, the website associated with the Disputed Domain Name also features products of the Complainant's competitors, making use of images of those products to unfairly and improperly burnish its status as a reputable business in

conjunction with its unauthorised use of the Complainant's trademarks in the Disputed Domain.

Accordingly, and in light of the above, there clearly is no legitimate non-commercial or fair use of the Disputed Domain Name being made by the Respondent. Instead, the Disputed Domain Name was clearly registered for the sole purpose of trading off the Complainant's name, reputation, trademarks, and services related to the HEETS Trademark, IQOS Trademark and their related products with the aim to capitalize on the reputation and goodwill of the Complainant's trademarks or otherwise mislead Internet users / relevant consumers.

All in all, the Respondent's misuse and abuse of the Disputed Domain Name, the act of displaying the IQOS Trademark of the Complainant on the Disputed Domain Name's associated website, and the unauthorized reproduction of the Complainant's copyright-protected works on that website, all infringe upon the Complainant's exclusive right to use and enjoy the HEETS Trademark and IQOS Trademark and other of its valuable associated intellectual property rights, harming the Complainant, and potentially diluting the value of the brand assets protected under relevant associated intellectual property rights.

This entire course of conduct, including the registration of the Disputed Domain Name and use of it in conjunction with a related website that itself contains further infringing materials also makes clear that the Respondent is taking unfair advantage of the goodwill and reputation associated with the Complainant's HEETS Trademark and other associated intellectual property rights, and is intentionally attempting to mislead relevant consumers into believing that the Disputed Domain Name, the website associated with it, and/or the Respondent's business are licensed by, have an association with or are otherwise endorsed by the Complainant.

In light of the above, the panel is of the opinion that the Respondent's registration of the Disputed Domain Name has clearly been made in bad faith, as has its ongoing use of the same. The Respondent is unfairly and unlawfully exploiting the commercial success and goodwill of the Complainant and its registered HEETS Trademark to attract Internet users to visit the website to which the Disputed Domain Name is directed. The Respondent's registration and use of the Disputed Domain Name is highly malicious and the Complainant's complaint is fully in compliance with Section 4(b)(iv) of UDRP.

6. Decision

Based upon the above findings, the panel determines that the Complainant has satisfied the 3 requirements under Paragraph 4(a) of the Policy, and in accordance with Paragraph 4(a) of the Policy and Article 15 of the Supplemental Rules, the remedy sought by the Complainant is hereby granted, and the Panel directs that the Disputed Domain Name be transferred to the Complainant as requested.

A handwritten signature in black ink, consisting of stylized, cursive letters. The signature is positioned above a solid horizontal line.

Peggy Po Yee CHEUNG
Panelist

Dated: 25 October 2021