

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Cole Rathbun Case No. D2023-1075

1. The Parties

Complainant is Monster Energy Company, United States of America (“United States”), represented by Knobbe, Martens, Olson & Bear, LLP, United States.

Respondent is Cole Rathbun, United States.

2. The Domain Name and Registrar

The disputed domain name <unleashthebeast.monster> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 10, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on March 17, 2023, 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 March 18, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Response was filed with the Center on March 29, 2023. In view of Respondent’s consent to transfer of the disputed domain name in its Response, on March 29, 2023, the Center provided the Parties with instructions for suspension and settlement. On March 30, 2023, Complainant emailed the Center that it did not wish to enter into settlement discussions and requested that the proceeding continue.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 26, 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 following facts appear from the Complaint (as amended to add the Registrar-provided registrant information) and its annexes, which have not been contested by Respondent.

Headquartered in Corona, California and formerly known as Hansen Beverage Company d/b/a Monster Beverage Company until it changed its name to Monster Energy Company in 2012, Complainant is in the business of designing, creating, developing, marketing, and selling beverages under the MONSTER ENERGY trademark (the "MONSTER ENERGY Mark") as well as its UNLEASH THE BEAST trademark (the "UNLEASH THE BEAST Mark"). Complainant asserts that its products sold bearing these marks since 2002 have established Complainant as one of the best-selling energy drink brands in the United States by unit volume and dollar value, and worldwide retail sales now exceed 6 billion cans per year with estimated retail revenues exceeding USD 13 billion per year. In the United States, Complainant asserts that its products bearing its MONSTER ENERGY Mark and UNLEASH THE BEAST Mark are sold in over 417,000 retail stores and outlets.

Complainant also shows it incorporates the MONSTER ENERGY Mark into its official domain name <monsterenergy.com> which has been used since August 19, 2003 to access Complainant's official website ("Official MONSTER ENERGY Mark Website") to promote its products and services customers, which website prominently displays the UNLEASH THE BEAST Mark and receives thousands of unique visitors each month. Complainant shows that between June 1, 2020, and July 29, 2022, Complainant's Official MONSTER ENERGY Mark Website displaying the UNLEASH THE BEAST Mark had over 28 million visits with over 22 million new users and over 62 million page views.

Complainant owns numerous trademark registrations around the world for the MONSTER ENERGY Mark and UNLEASH THE BEAST Mark for its energy drink products, including the following incontestable trademark registrations of record with the United States Patent and Trademark Office ("USPTO"):

- United States Registration No. 3,057,061 for MONSTER ENERGY, registered on February 7, 2006, for, *inter alia*, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs in International Class 32, claiming a first use date of March 27, 2002; and
- United States Registration No. 2,769,364 for UNLEASH THE BEAST!, registered on September 30, 2003, for fruit juice drinks, soft drinks, carbonated soft drinks and soft drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs in International Class 32, claiming a first use date of April 16, 2002.

The Whois record shows the disputed domain name was registered on February 11, 2023, and Complainant shows it resolves to a landing page which features an image that copies the MONSTER ENERGY Mark and Complainant's related "claw" logo above the statement "By clicking the button below, you are of legal age to consume Monster Energy™". When clicked, a hyperlink takes consumers to a webpage featuring a pornographic image incorporating Complainant's MONSTER ENERGY Mark and trade dress.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's trademark;

that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

On March 29, 2023, the Center received an online submission a Response template from Respondent, which provided in pertinent part: “I do not wish to refute the allegations and statements listed in the initial complaint. I created the site as a joke website, and I do not hold ownership of the Monster Energy brand. I had no interest in profiting off the site, and nothing was hosted on the site except for the contents listed on Page 16 of the complaint.”

In addition, below the heading “Consent to remedy (optional)” in the completed Response template submitted, Respondent stated: The Respondent consents to the remedy requested by Complainant and agrees to transfer the disputed domain names to Complainant. As noted above in Section 3, Complainant did not wish to enter into settlement discussions and requested the proceeding continue.

6. Discussion and Findings

Complainant must make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

The Panel notes both Respondent’s consent to transfer and Complainant’s rejection of settlement and request for the proceeding to continue in section 3 above. The Panel finds in this instance given the circumstances, namely: 1) a disputed domain name configured to combine both Complainant’s well-known registered UNLEASH THE BEAST Mark and the predominant portion of its MONSTER ENERGY Mark; 2) used to access a website featuring its registered logo design and MONSTER ENERGY Mark; and 3) that directs users to click on a link to a clearly pornographic image graphically incorporating the marks and trade dress in a manner that tarnishes them, it is appropriate to grant Complainant’s request and proceed to a substantive decision on the merits. See [WIPO Overview 3.0](#), section 4.10 and decisions collected under that section.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Moreover, “[n]oting in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element. [...] the filing/priority date, date of registration, and date of claimed first use, are not considered relevant to the first element test. These factors may however bear on a panel’s further substantive determination under the second and third elements”. [WIPO Overview 3.0](#), section 1.1.2.

Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, the Panel finds that Complainant has established trademark rights in both the UNLEASH THE BEAST Mark and the MONSTER ENERGY Mark which Complainant has shown appear in tandem on product packaging in the worldwide sale of Complainant’s beverage products.

The Panel finds, as have previous UDRP panels, that the UNLEASH THE BEAST Mark is well-known worldwide. See *e.g.*, *Monster Energy Company v. Kenna James*, WIPO Case No. [D2022-4472](#). Similarly, since the disputed domain name also uses the “.monster” gTLD which incorporates the MONSTER ENERGY Mark in its entirety, the Panel considers relevant to its finding the decisions of numerous prior UDRP panels recognizing the fame of the MONSTER ENERGY Mark. See, *e.g.*, *Monster Energy Company v. Nabiev Ravshan*, WIPO Case No. [D2021-1804](#); and *Monster Energy Company v. Whois Agent, Whois Privacy Protection Service, Inc. / Artsiom Dryneuski* WIPO Case No. [D2021-4064](#).

With Complainant’s rights in both the UNLEASH THE BEAST Mark and MONSTER ENERGY Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s UNLEASH THE BEAST Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7.

Prior UDRP panels have also held “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”. See, *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and Complainant’s Marks shows the disputed domain name is identical to the UNLEASH THE BEAST Mark. Complainant’s UNLEASH THE BEAST Mark is incorporated in its entirety and remains recognizable in the disputed domain name, followed only by the TLD “.monster”. Prior UDRP panels have found the TLD, when viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11.1; see also *L’Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#). In this case, however, the Panel finds it is relevant to note that in Respondent’s configuration of the disputed domain name selected the one TLD that is confusing similar to Complainant’s MONSTER ENERGY Mark, more properly considered for purposes of determination of bad faith registration and use in section 6.C below.

Accordingly, the Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Compagnie Generale des Matieres Nucleaires v. Greenpeace International*, WIPO Case No. [D2001-0376](#); and *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent permission or license to use Complainant’s trademarks in any manner, including in domain names. Prior UDRP panels have held “[i]n the absence of any license or permission from Complainant to use its trademark, no actual or contemplated *bona fide* or legitimate use of the Disputed Domain Name could reasonably be claimed”. *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); see also *Cartier International A. G. v. Blogger Pty Ltd, Publishing Australia*, WIPO Case No. [DAU2013-0037](#).

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the

Whols information evidence submitted in its annexes that Respondent, as registrant of the disputed domain name, identified as “Cole Rathbun” is not commonly known by the disputed domain name because the name clearly bears no resemblance to it, nor to the UNLEASH THE BEAST Mark. Prior UDRP panels have held where no evidence, including the Whols record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Most importantly, Complainant’s evidence shows the disputed domain name resolves to a website that copycat’s Complainant’s MONSTER ENERGY Mark and protected claw logo design to pass itself off as Complainant and draw consumer interest to a linked page featuring a pornographic image intended to tarnish Complainant’s MONSTER ENERGY Mark and trade dress. Prior UDRP panels have held that use of a domain name that is confusingly similar to a complainant’s trademark to link to a website featuring pornographic or adult content evinces a lack of legitimate rights or interests. See *MatchNet plc. v. MAC Trading*, WIPO Case No. [D2000-0205](#) (“finding that it is not a *bona fide* offering of goods or services to use a domain name for commercial gain by attracting Internet users to third party sites offering sexually explicit and pornographic material, where such use is calculated to mislead consumers and tarnish a complainant’s mark”).

These facts establish Complainant’s *prima facie* showing. Despite its response, Respondent has not provided any basis on which that showing may be overcome. Complainant has, therefore, successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#). Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The Panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends that since Complainant has developed a distinctive and widely recognized reputation in the UNLEASH THE BEAST Mark, Respondent was no doubt aware of the UNLEASH THE BEAST Mark and MONSTER ENERGY Mark and intentionally targeted them in making his decision to configure and register the disputed domain name essentially identical to Complainant’s UNLEASH THE BEAST Mark at the second level and appended with the one TLD “.monster” that is confusing similar to Complainant’s MONSTER ENERGY Mark.

Given the widespread recognition of Complainant’s UNLEASH THE BEAST Mark worldwide shown in the evidence noted under section 4 above, including the United States, where Respondent appears to be located, the decades of registered use of the UNLEASH THE BEAST Mark prior to Respondent’s assumed registration of the disputed domain name on February 11, 2023, the Panel finds Respondent likely had actual knowledge of Complainant’s rights when it registered the disputed domain name, which shows bad faith registration. See *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); see also *Monster Energy Company v. Kenna James*, WIPO Case No. [D2022-4472](#).

Further the facts set forth above make it reasonable for the Panel to conclude it is more likely than not that Respondent targeted Complainant’s trademarks to register and use it to trade on Complainant’s reputation and goodwill, and Respondent is found, therefore, to have registered and used the disputed domain name in bad faith. See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whols Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#).

Complainant also contends that Respondent is engaged in passive holding because it believes “to the best of Complainant’s knowledge, Respondent has not made any use of the disputed domain name”. While the Panel has reviewed the facts and considered Complainant’s arguments, the Panel cannot agree with Complainant in this regard, because as noted in section 6.B above, Respondent is actively using the disputed domain name, but for the illegitimate purpose of accessing a website impersonating Complainant providing a clickable link to a page featuring a pornographic image intended to tarnish Complainant’s MONSTER ENERGY Mark and trade dress.

As noted in section 6.B above, therefore, Respondent is not passively holding the disputed domain name, but in fact actively using it and those actions constitute use of the disputed domain name in bad faith because Respondent has combined two trademarks which are well-recognized worldwide for energy drink beverage products and used them to attract Internet users to its pornographic image website and tarnish Complainant’s MONSTER ENERGY Mark and UNLEASH THE BEAST Mark. See *SODEXO v. Nihat Bahçe, FN Market / Nihat BAHCE, fnmarket*, WIPO Case No. [DCC2015-0002](#).

Prior UDRP panels have consistently held that a respondent’s use of a confusingly similar domain name to direct Internet users to adult content, as here, is evidence of bad faith registration and use of that domain name. See *Microsoft Corporation v. Paul Horner*, WIPO Case No. [D2002-0029](#); see also, *Bayerische Motoren Werke AG v. Victor Frankl*, WIPO Case No. [D2013-0701](#) (“[i]n this case, the Complainant alleges that the Respondent registered and uses the Disputed Domain Name in bad faith for a variety of reasons, particularly because of Respondent’s use of the Disputed Domain Name for an adult-content website. The Panel finds in this respect that such use must be considered as tarnishing the Trademark and the Complainant and therefore constitutes evidence of a bad faith use of the Disputed Domain Name under the Policy.”) The Panel in this proceeding reaches the same conclusion and finds Respondent’s actions here constitute bad faith use of the disputed domain name because Respondent is using the UNLEASH THE BEAST Mark within the disputed domain name to attract Internet users and then redirect them to a website featuring a lewd pornographic image incorporating Complainant’s MONSTER ENERGY Mark and trade dress. See *SODEXO v. Nihat Bahçe, supra*; *Christian Dior Couture v. Identity Protection Service / Tom Birkett*, WIPO Case No. [D2014-1053](#); and [WIPO Overview 3.0](#), Section 3.12.

The Panel finds Complainant’s arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith, and Complainant has satisfied paragraph 4(a)(iii) 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 disputed domain name <unleashthebeast.monster> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: May 12, 2023