

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Kyle Broflovsky, MonsterEnergy
Case No. D2023-3834

1. The Parties

Complainant is Monster Energy Company, United States of America ("Unites States" or "U.S."), represented by Knobbe, Martens, Olson & Bear, LLP, United States.

Respondent is Kyle Broflovsky, MonsterEnergy, United States.

2. The Domain Name and Registrar

The disputed domain name <monsterenergy.promo> (the "Disputed Domain Name") is registered with Squarespace Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 14, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 18, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on September 18, 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 September 25, 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 September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 19, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on October 25, 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

Complainant is in the business of designing, creating, developing, marketing, and selling beverages. Complainant is the owner of extensive rights in and to the MONSTER and MONSTER ENERGY trademarks (the "Marks"). Complainant owns registrations of the Marks, including without limitation, United States Registration No. 3,044,315 for MONSTER ENERGY on January 17, 2006, in class 5. Complainant has numerous other registrations of the Marks worldwide. These registrations pre-date Respondent's August 8, 2023 registration of the Disputed Domain Name.

Complainant has used the Marks in commerce since at least as early as 2002. In addition to beverages, Complainant extensively uses its MONSTER ENERGY Mark in connection with clothing, beverageware, automotive products, sports and fitness equipment, and other products and services and is well-known throughout the United States and internationally in connection with a wide variety of goods and services.

Complainant operates *inter alia* the website "www.monsterenergy.com".

Complainant was formerly known as Hansen Beverage Company d/b/a Monster Beverage Company. Complainant changed its name to Monster Energy Company effective January 5, 2012. Documents reflecting Complainant's name change have been filed with all the necessary trademark offices worldwide.

The Disputed Domain Name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is confusingly similar to the Marks, in which Complainant has enforceable trademark rights, pursuant to paragraph 4(a)(i) of the Policy.

Complainant further contends that long before the acts of Respondent complained of herein, and by virtue of the extensive sales and marketing conducted by Complainant, the Marks had become recognized by consumers in the United States and throughout the world as designating Complainant as the source of the MONSTER ENERGY goods and services. Accordingly, the Marks are extremely valuable to Complainant.

Complainant further contends that, in early 2002, it introduced its MONSTER ENERGY line of beverages in the United States, which routinely bear the Marks. In 2002, Complainant also began selling its MONSTER ENERGY line of beverages internationally. Since its introduction, Complainant's MONSTER ENERGY line has been tremendously successful. Sales have increased every year since the brand's launch. Worldwide retail sales now exceed 6.7 billion cans per year with estimated retail sales exceeding USD 14 billion per year.

Complainant further contends that, over time, it has expanded the range of beverage products sold under the Marks. Complainant has continued to use the Marks in connection with its drinks since 2002. The Marks have developed into a famous identifier of Complainant's high-quality line of energy drinks.

Complainant further contends that, since 2002, in addition to beverages, it has used and continues to use the Marks in connection with various items, including without limitation, entertainment services; video games; clothing; and accessories. Complainant also owns numerous trademark registrations throughout the world, used in connection with beverages, nutritional supplements, clothing, accessories, bags, sports gear, stickers, and decals.

Complainant further contends that, since the launch of its energy drinks in 2002, it has sold more than 48 billion cans worldwide, and now sells approximately 6.7 billion cans per year worldwide. Sales of Complainant's drinks have generated over USD 105 billion in estimated total retail revenues internationally. Complainant further contends that its brand has established itself as the best-selling energy drink brand in the U.S. by unit volume and dollar value, and continues to be the fastest-growing major brand of energy drinks in the U.S. and worldwide.

Complainant further contends that, worldwide adjust gross sales for all of Complainant's brands for the year ended December 31, 2022 increased to USD 7.2 billion from USD 6.47 billion in 2021. By unit volume and dollar value, Complainant's drinks are generally the best-selling energy drinks in the United States and the second best-selling worldwide.

Complainant further contends that the Marks are the subject of substantial and continuous marketing and promotion. Complainant has widely marketed and promoted its Marks: on apparel; on goods across many different industries; on a wide range of merchandise bearing the Marks distributed in retail outlets; in magazines; on the "www.monsterenergy.com" website and other Internet websites; in publications; through sponsorship of music festivals and musicians; and through distribution of point of sale and promotional materials. As a result, over the past twenty-one years, the distinctive Marks have developed into a famous identifier of Complainant and its high-quality, premium beverages.

Complainant further contends that it owns a domain name <monsterenergy.com> at which it launched its website on August 19, 2003. Complainant's website prominently displays the Marks and receives thousands of unique visitors each month. Between June 1, 2020 and July 29, 2022, Complainant's website had over 28 million visits with over 22 million new users and over 62 million page views.

Complainant further contends that the presence of the Marks on social media websites has expanded dramatically. As of August 2023, Complainant's Facebook page had more than 25.4 million "likes", Complainant's Twitter account had more than 2.9 million followers, and Complainant's Instagram page had more than 8.4 million followers.

Complainant further contends that, in 2020 alone, Complainant's various social media channels had over 236 million fan engagements. The same channels reached over 11 billion impressions on online users. Additionally, Complainant's highly popular videos that are published on Complainant's various social media channels were viewed over 1 billion times. The Marks are prominently displayed on all of Complainant's social media channels that achieved this significant popularity in 2020.

Complainant further contends that it also delivers content through various YouTube channels, including Complainant's MONSTER ENERGY channel at "www.youtube.com/monsterenergy" and THE MONSTER ARMY YouTube channel at "www.youtube.com/monsterarmy". Since its launch, the MONSTER ENERGY YouTube channel has received more than 1.25 billion views worldwide and, as of August 2023, had over 3.15 million subscribers.

Complainant further contends that a number of articles have been published in internationally circulated magazines, including Forbes, Fortune, Newsweek, and Business Week, describing and referring to Complainant's products and to the success of Complainant and its products, all of which have featured the Marks. As a result, the Marks have received extensive press coverage since the launch of the drinks two decades ago in 2002.

Complainant further contends that it has strong trademark rights in the Marks resulting from its registrations in numerous countries, and from continuous use of the Marks in commerce since at least as early as 2002. The Disputed Domain Name was registered on August 8, 2023, approximately twenty-one years after Complainant began using the Marks. Thus, Complainant has established rights in the Marks.

Complainant further contends that the Disputed Domain Name incorporates the Marks in their entirety and is followed by the generic Top-Level Domain “.promo”. The Disputed Domain Name suggests that the website is operated by Complainant to promote its products; that it is likely that the average customer will associate the Disputed Domain Name as the source of products and/or services of Complainant; or that Complainant has sponsored or approved the Disputed Domain Name, which it has not.

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further asserts that through its extensive efforts to market, promote, and protect its Marks, Complainant has developed significant worldwide goodwill and recognition of its Marks. Complainant's registration of its MONSTER ENERGY Mark in the United States first issued in January 2006, more than seventeen years before Respondent registered the Disputed Domain Name. Further, Complainant's MONSTER ENERGY Mark has been famous since well before Respondent registered the Disputed Domain Name in August 2023. Respondent obviously had actual knowledge of Complainant's famous Marks when it registered the Disputed Domain Name.

Complainant further asserts that it has not authorized, licensed, or permitted Respondent, or any person or entity, to use the Marks in connection with registering the Disputed Domain Name. There is no evidence that Respondent has been or was commonly known by the Disputed Domain Name.

Complainant further asserts that Respondent is not making any *bona fide* or legitimate use of the Disputed Domain Name. Instead, the Disputed Domain Name leads to an error page.

Complainant alleges that Respondent has registered and used the Disputed Domain Name in bad faith, pursuant to paragraph 4(a)(iii) of the Policy.

Complainant further alleges that Respondent's passive holding of the Disputed Domain Name is evidence of bad faith registration and use. Complainant further alleges that it is not possible to conceive of a plausible situation in which Respondent would have been unaware of Complainant and its well-known Marks. Complainant further alleges that Respondent's actual knowledge of Complainant's rights in the Marks is additional evidence of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the Marks 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.

A. Identical or Confusingly Similar

Complainant contends that the Disputed Domain Name is confusingly similar to the Marks, in which Complainant has enforceable trademark rights, pursuant to paragraph 4(a)(i) of the Policy.

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the Marks.

Complainant further contends that it owns registrations of the Marks, including without limitation, United States Registration No. 3,044,315 for MONSTER ENERGY on January 17, 2006 in class 5. Complainant has numerous other registrations of the Marks worldwide.

Respondent has not contested Complainant's assertion of rights in the Marks.

The Panel finds that Complainant, for purposes of this proceeding, has enforceable rights in the Marks.

Complainant further contends that the Disputed Domain Name is confusingly similar to the Marks.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entirety of the trademark in a domain name will be considered confusingly similar. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that generic Top-Level Domains such as (".promo") may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the Marks is included in the Disputed Domain Name with only the addition of the gTLD ".promo".

Therefore, the Disputed Domain Name is confusingly similar to the Marks, pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Marks.

Complainant further asserts that its Marks have been famous since well before Respondent registered the Disputed Domain Name in August 2023. Complainant further asserts that Respondent obviously had actual knowledge of Complainant's famous Marks when it registered the Disputed Domain Name. Complainant further asserts that such actual knowledge precludes any *bona fide* or legitimate use of the Disputed Domain Name.

Complainant further asserts that it has not authorized, licensed, or permitted Respondent, or any person or entity, to use the Marks in connection with registering the Disputed Domain Name. Complainant further asserts that there is no evidence that Respondent has been or was commonly known by the Disputed Domain Name.

The Panel finds that Complainant has made a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name and that Respondent has not responded.

Therefore, the Panel finds that Complainant has satisfied the elements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant alleges that Respondent registered and is using the Disputed Domain Names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the Marks or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the Marks in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Marks as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

The four criteria set forth in paragraph 4(b) of the Policy are nonexclusive. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

The Disputed Domain Name is passively held. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." Section 3.3 of the [WIPO Overview 3.0](#).

Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's Marks, the composition of the Disputed Domain Name, the implausibility of any good faith use to which the misleading Disputed Domain Name may be put, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that the additional factors of bad faith are present, and that Complainant has met the requirements of 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, <monsterenergy.promo>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: November 2, 2023