

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Szymon Nowak
Case No. D2022-3010

1. The Parties

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

The Respondent is Szymon Nowak, Canada.

2. The Domain Name and Registrar

The disputed domain name <monsterenergy.pro> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2022. On August 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 17, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 2022, 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 August 23, 2022.

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 of the Complaint, and the proceedings commenced on August 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2022. The Center received an informal email communication from the Respondent on August 25, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 23, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on September 29, 2022. 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 a United States company operating internationally in the field of energy beverages, it has used the MONSTER and MONSTER ENERGY marks in commerce since 2002, and it owns numerous trademark registrations for these marks worldwide, including:

- Unites States Trademark Registration No. 3057061, MONSTER ENERGY, word, registered on February 7, 2006, in class 32;
- European Union Trade Mark Registration No. 011154739, M MONSTER ENERGY, figurative, registered on January 9, 2013, in classes 5, 16, 25 30, and 32; and
- European Union Trade Mark Registration No. 004823563, MONSTER ENERGY, word, registered on January 10, 2007, in classes 5, and 32, (collectively the “MONSTER ENERGY mark”).

Prior decisions under the Policy have recognized the international well-known character of the MONSTER ENERGY mark in the energy beverages sector.¹

The Complainant further owns the domain name <monsterenergy.com> (registered on February 22, 2002), which resolves to its corporate website.

The disputed domain name was registered on June 30, 2022, and resolves to a blog in Polish language, entitled in large blue hyperlinked text “Black93”, that provides information about Vitamin D3 and various nutritional supplements for sports. The most recent blog posts feature dates from June 2020. This site includes what appears to be various links to other sites related to sports supplements, as well as a menu with various sections (“Home”, “Supplementation”, and “Contact”), that are not operative. The general appearance of the site is simple, with all sections included in plain text over a white background, with no images but some signals, like an arrow, three parallel lines, or a cross. This site does not include any reference to the owner of the site or that of the disputed domain name, or any contact information.

5. Parties’ Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

Due to extensive marketing and promotion, the MONSTER ENERGY mark is well known worldwide and it has received extensive press coverage since its launch (in 2002). The Complainant’s website (“www.monsterenergy.com”) receives thousands of visitors each month (e.g., between June 1, 2020, and July 29, 2022, it had over 28 million visits with over 22 million new users and over 62 million page views). There is a strong presence of the Complainant’s MONSTER and MONSTER ENERGY marks on social media (e.g., in 2020, its various social media channels had over 236 million fan engagements, and reached

¹ See, *inter alia*, *Monster Energy Company v. WhoisGuard, Inc. / Ivan Demidov, Self-employed*, WIPO Case No. [D2019-2494](#); *Monster Energy Company v. Nikita Serov, serovagency*, WIPO Case No. [D2020-2265](#); *Monster Energy Company v. 高海生 (Hai Sheng Gao)*, WIPO Case No. [D2020-3241](#); or *Monster Energy Company v. amit kumar*, WIPO Case No. [D2020-0165](#).

over 11 billion impressions on online users).²

The Complainant commercializes not only energy drinks, but also a wide variety of goods and services, including clothing, accessories, nutritional supplements, automotive products, sports and fitness equipment, helmets, stickers, and decals, as well as entertainment services, including video games. The Complainant's worldwide retail sales exceeds 6 billion cans per year with worldwide adjusted gross sales for all brands for the year ended December 31, 2021, of USD 6.47 billion, and its products are sold in many jurisdictions (including relevant countries for this case Canada and Poland).³

The disputed domain name is identical to the MONSTER ENERGY mark, suggesting an implied affiliation with the Complainant and its trademark. The average customer would consider the Respondent's site belongs to, is sponsored by, or approved by to the Complainant.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The fame of the Complainant and its trademark was established many years before the registration of the disputed domain name, the Respondent is not commonly known by the disputed domain name, and is not authorized to use the MONSTER ENERGY mark. Due to the well-known character of the Complainant's trademark, the Respondent can claim no actual or contemplated *bona fide* or legitimate use of the disputed domain name.

The Respondent registered and is using the disputed domain name in bad faith. Given the Complainant's numerous trademark registrations, its extensive international use and reputation in the MONSTER ENERGY mark, it is not possible to conceive that the Respondent was unaware of the Complainant and its well-known trademark. The Respondent is not making any use of the disputed domain name. Holding a domain name identical to the MONSTER ENERGY mark deprives the Complainant from legitimately reflecting its mark in a corresponding domain name, which constitutes bad faith. Marks that have a high degree of inherent or acquired distinctiveness are entitled to a greater scope of protection.

The Complainant has cited previous decisions under the Policy that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

In an informal email communication to the Center, the Respondent indicated that he could not understand the Complainant's claim.

The Respondent further indicated that the disputed domain name domain was intended for a blog about "bodybuilding, doping and sport addressed to the Poland region", and it does "not infringe the reputation of the Monster Energy brand in any way". The Respondent does "not use Monster company trademarks, only the domain name contains these two popular words that relate directly to the topic of the blog".

Additionally, the Respondent indicated, "in Poland, where the domain is used, 'Monster Energy' is not a registered trademark, so what rights do I infringe?"

² The Complainant further indicates that as of June 2022, the MONSTER ENERGY Facebook page had more than 25 million likes; its Twitter account had more than 3 million followers; its Instagram page had more than 8.1 million followers; and its TikTok profile had more than 1.4 million followers and 10.5 million likes.

³ The Complainant indicates that its products are sold throughout the United States and many other countries, including but not limited to: Austria, Belize, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Venezuela, Uruguay, Albania, Andorra, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, Canada, Mexico, Australia, New Zealand, Azerbaijan, Georgia, the Russian Federation, Slovenia, Hong Kong, China, India, Republic of Korea, Philippines, Singapore, Antigua, Barbados, Dominica, Grenada, Guadeloupe, Jamaica, St. Lucia, Trinidad and Tobago, Afghanistan, Kuwait, United Arab Emirates, Angola, Botswana, Kenya, Lesotho, Mauritius, Madagascar, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, and Uganda.

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

The Complainant has rights in the MONSTER ENERGY mark by virtue of its trademark registrations as well as its continuous use of this mark on the market since 2002.

The disputed domain name incorporates the MONSTER ENERGY mark, and the generic Top-Level Domain “gTLD “.pro” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, and 1.11, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant’s trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that demonstrating 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 primarily if not exclusively within the respondent’s knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the complainant has made a *prima facie* case the respondent lacks rights or legitimate interests.

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy (without limitation), in order to rebut the Complainant’s *prima facie* case.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Respondent has indicated that the disputed domain name is intended for a blog about “bodybuilding, doping and sport addressed to the Poland region”, and it included the words “monster energy” only because they directly relate to the topic of the blog.

The Panel notes that the word “monster” and the word “energy” are included in the dictionary in the English language, “monster” indicating an animal or a thing that is very large or ugly, and “energy” a source of power or the strength, or the effort and enthusiasm required for physical or mental activity, work, *etc.*

Panels have consistently recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent. Therefore, the mere arguments that a domain name corresponds to a dictionary term or phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights. See section 2.10, [WIPO Overview 3.0](#).

The Panel notes that the disputed domain name is used in connection to a blog in Polish language that provides information about the use of various supplements and vitamins, as well as their respective interconnections with coronavirus and, specifically, with Covid-19. This blog further contains information about bodybuilding and sports supplements, in connection to the increase of energy and performance in sports.

The content at the disputed domain name could in theory be used for a blog. However, the Respondent's adoption of the terms "monster" and "energy" in combination does not seem likely to be a mere coincidence. The Panel notes that the Respondent has not offered any credible explanation about the reasons behind the choice of the English words "monster energy" to identify his Polish blog about vitamins and supplements for bodybuilding and sports, which is addressed -in the Respondent's words- "to the Poland region". Also, the disputed domain name provides various hyperlinks to commercial websites suggesting that this is the ultimate intent behind the Respondent's use of the disputed domain name. The Panel further notes that the Respondent's blog has a plain look and feel, various of its sections are not operative, and that the evidence provided by the Complainant (Annex N to the Complaint) indicates that the disputed domain name was used in connection to this same blog before the filing and notification of the Complaint, which given the June 2020 date reflected on the blog posts suggests a lack of update, especially when compared to the June 2022 registration date of the disputed domain name, lending further support to the finding that said blog posts are merely pretext for the Respondent's use of the identical disputed domain name to capitalize on the Complainant's trademark.

The Panel further notes that the Respondent's blog does not include any information about the Respondent or any disclaimer indicating that it is unrelated to the Complainant and its trademark. Rather, the Panel takes notes that the email address from which the Respondent operates ("black93@[...].com"), correlates to a domain name to which a majority of hyperlinks redirect, namely <ads.black93.eu>. Accordingly, the Respondent's use of the disputed domain name – bearing the Complainant's mark identically – to reflect links to its websites, among other commercial websites, cannot constitute a *bona fide* offering of goods or services.

Lastly, it is to be noted that, under the Policy, a core factor to consider fair the use of a domain name is that it does not falsely suggests any type of affiliation with the trademark owner, and, generally speaking, a domain name which is identical to a complainant's trademark carries a high risk of implied affiliation. See section 2.5, [WIPO Overview 3.0](#).

In this respect, the identical nature of the disputed domain name to the reputed MONSTER ENERGY mark, leads the Panel to consider that Internet users may consider that there is any type of affiliation between the owner of the disputed domain name and the site linked to it, the Complainant or its trademark. Hence, the disputed domain name generates a high risk of implied affiliation.

Therefore, the Panel finds that the Respondent has not sufficiently rebutted the Complainant's *prima facie* case, and the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith, and paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such

conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location".

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found in other circumstances by the Panel.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence". See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the MONSTER ENERGY mark is reputed in its field, as has been recognized by various prior decisions under the Policy;⁴

(ii) the MONSTER ENERGY mark has been extensively used (since 2002), and has an extensive presence in the Internet, so that any search of the terms "monster energy" over the Internet reveals the Complainant's prior rights and its website at "www.monsterenergy.com" (identical, excluding the gTLD ".com," to the disputed domain name);

(iii) the MONSTER ENERGY mark is internationally used, including in Canada, where the Respondent is located according to the Registrar verification, or in Poland, the country to which the Respondent's blog is addressed;

(iv) the disputed domain name incorporates the MONSTER ENERGY mark in its entirety, generating confusion or implied association, creating the impression that it refers to an official site of the Complainant or one of its points for sales or distribution;

(v) the Respondent's blog does not include any information about the Respondent or any disclaimer indicating that it is unrelated to the Complainant and its trademark;

(vi) the Respondent has not offered any credible explanation about the reasons behind the choice of the English words "monster energy" to identify its Polish blog addressed "to the Poland region".

The Panel further notes that the Respondent is familiar with sports and supplements to increase performance in sports (his blog is specifically related to this topic), and the MONSTER ENERGY mark is reputed and mainly used in connection to energy beverages, which is a product particularly consumed by sportsmen and women, and has been particularly promoted in relation to sports. In this respect, the Panel, under its general powers articulated, *inter alia*, in paragraph 10 of the Rules, has consulted the Complainant's website at "www.monsterenergy.com," which offers information about the promotion of the MONSTER ENERGY mark in connection to various sports (Formula 1 racing, Skiing, skateboarding, snowboarding, surfing, super bike, etc.).

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and has been used targeting the Complainant's trademark in bad faith, seeking to mislead Internet users to believe that there is a connection between the disputed domain name and the Complainant or its trademarks, to increase the traffic of the

⁴ See footnote number 1, *supra*.

Respondent's blog for a commercial gain, which constitutes bad faith within the meaning of paragraph 4 (b)(iv) of the Policy.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element 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.pro>, be transferred to the Complainant.

/Reyes Campello Estebanz/

Reyes Campello Estebanz

Sole Panelist

Date: October 19, 2022