

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Milen Radumilo
Case No. D2023-4078

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 Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <monster-energy.info> is registered with Communal Communications Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2023. On September 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 1, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 2023 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 October 24, 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 the Respondent of the Complaint, and the proceedings commenced on October 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2023.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on November 20, 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 Complainant is in the business of designing, creating, developing, marketing, and selling beverages. The Complainant is the owner of extensive rights in the MONSTER and MONSTER ENERGY trademarks.

In early 2002, the Complainant introduced its MONSTER ENERGY line of beverages in the United States, which prominently bear the Complainant's MONSTER ENERGY trademark. In addition to beverages, the Complainant extensively uses the MONSTER ENERGY trademark in connection with clothing, beverageware, automotive products, sports and fitness equipment, and other products and services throughout the United States and internationally.

In 2003, the Complainant began selling its MONSTER ENERGY line of beverages internationally. Worldwide retail sales now exceed 6.7 billion cans per year with estimated retail sales exceeding USD 14 billion per year, including more than USD 11 million for 2022 in Romania alone.

By unit volume and dollar value, the Complainant's MONSTER ENERGY drinks are generally one of the best-selling energy drinks in the United States and one of the best-selling worldwide.

In 2020 alone, the Complainant's various social media channels had over 236 million fan engagements. These same channels reached over 11 billion impressions on online users.

Since its launch, the MONSTER ENERGY YouTube channel has received more than 1.25 billion views worldwide and, as of March 2023 had over 3.05 million subscribers.

The Complainant owns registered trademark rights in MONSTER ENERGY in countries around the world, all pre-dating the Respondent's registration of the disputed domain name by many years. Copies of the following trademarks are provided:

- United States Trademark Registration No. 3,057,061 for MONSTER ENERGY in Class 32, filed on April 18, 2002 and registered on February 7, 2006;
- United States Trademark Registration No. 3,044,315 for MONSTER ENERGY in Class 5, filed on May 23, 2003 and registered on January 17, 2006; and
- United States Trademark Registration No. 4,036,681 for MONSTER ENERGY in Class 32, filed on September 11, 2007 and registered on October 11, 2011; and
- United States Trademark Registration No. 6,789,708 in Class 12, filed on March 9, 2022 and registered on July 12, 2022,

The Complainant owns the domain name <monsterenergy.com> and used it to launch its "www.monsterenergy.com" website on August 19, 2003.

This official website prominently displays the MONSTER ENERGY trademark and receives thousands of unique visitors each month.

Between June 1, 2020, and July 29, 2022, the Complainant's MONSTER ENERGY website had over 28 million visits with over 22 million new users and over 62 million page views.

The Respondent registered the disputed domain name on September 17, 2022 and is not using it for an active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to its MONSTER ENERGY trademarks. It incorporates the Complainant's MONSTER ENERGY trademark in its entirety and is followed by the generic Top-Level Domain ("gTLD") ".info". It differs only in the insertion of a hyphen between the words "monster" and "energy", which the Complainant submits is a minimal alteration which does not change the meaning of the phrase or its overall commercial impression.

Accordingly, the disputed domain name <monster-energy.info> is identical or confusingly similar to the Complainant's MONSTER ENERGY trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not authorized, licensed, or permitted the Respondent to use the MONSTER ENERGY trademark in connection with the disputed domain name or otherwise, and there is no evidence that the Respondent has been or was commonly known by the disputed domain name. The Respondent is not and has never been an agent of the Complainant, nor is there any contractual relationship between them. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Accordingly, the Respondent has no rights or legitimate interests in the disputed domain name under Policy paragraph 4 (a)(ii).

The Respondent has registered and used the disputed domain name in bad faith.

The Complainant's MONSTER ENERGY trademark had become well-known in the United States and internationally long before the registration of the disputed domain name.

Given the Complainant's extensive reputation and its numerous trademark registrations for MONSTER ENERGY, the Complainant argues that it is not possible to conceive of a plausible situation in which the Respondent would not have been aware of the Complainant and its MONSTER ENERGY brand.

The Respondent is not making a *bona fide* use of the disputed domain name, which leads to an inactive website. Holding of the disputed domain name, which is identical to the Complainant's MONSTER ENERGY trademark, is evidence of bad faith registration and use under the Policy (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

Accordingly, the Respondent's activities constitute bad faith registration and use of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

To prevail in the proceedings under the Policy, the Complainant must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith.

Likewise, under paragraph 4(c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in its response to the Complaint by demonstrating, among others, the circumstances mentioned under this paragraph of the Policy.

A. Identical or Confusingly Similar

The Complainant is the owner of the well-known MONSTER ENERGY trademark.

The disputed domain name is composed of the MONSTER ENERGY trademark, with the only addition of a hyphen to denote the space between the two words.

The gTLD “.info” is disregarded for the purpose of the comparison.

The MONSTER ENERGY trademark is clearly recognizable in the disputed domain name.

Therefore, the Panel finds that the disputed domain name is identical to the Complainant’s trademark. The condition of paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

As set forth by paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is 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 trademark or service mark at issue.

The Respondent has not been licensed or authorized to use the MONSTER ENERGY trademark or to register the disputed domain name.

There is no evidence of any *bona fide* use of the disputed domain name.

Therefore, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect to the disputed domain name, and the burden of production of evidence shifts to the Respondent.

The Respondent did not respond to the Complaint in order to provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an administrative panel to be evidence of bad faith registration and use of a domain name. It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 web site or location or of a product or service on your web site or location."

Given the well-known character of the MONSTER ENERGY trademark, the Respondent cannot have ignored the existence and the reputation of this trademark at the time it registered the disputed domain name.

Based on the uncontested facts of this case, on balance, there does not appear to be any other reason for the Respondent's registration of the disputed domain name other than for the possibility to trade off the goodwill and reputation of the Complainant's MONSTER ENERGY trademark or otherwise create a false association with the Complainant.

With no response from the Respondent, this claim is undisputed.

From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

In the present case, the Panel is of the opinion that the factors related to passive use apply in this case:

- the Complainant's MONSTER ENERGY trademark is distinctive and well-known;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- the Respondent provided incomplete or false contact details when registering the dispute domain name (the Written Notice was not able to be delivered by the courier service); and
- given the identity with the Complainant's registered trademark and the well-known character of the MONSTER ENERGY trademark, the Panel cannot conceive any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's trademark rights.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may infer from the circumstances of the case, that it considers appropriate.

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning 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 <monster-energy.info> be transferred to the Complainant.

/Marie-Emmanuelle Haas/

Marie-Emmanuelle Haas

Sole Panelist

Date: December 6, 2023