

## ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Гетьман Алёна/Getman Alena  
Case No. D2024-2232

### 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 Гетьман Алёна/Getman Alena, Ukraine.

### 2. The Domain Name and Registrar

The disputed domain name <monster-energy.store> (the “Disputed Domain Name”) is registered with Hosting Ukraine LLC (ua.ukraine) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2024. On May 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 5, 2024, 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 June 10, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On June 10, 2024, the Respondent sent two email communications to the Center in Russian. The Complainant filed an amended Complaint on June 14, 2024.

On June 10, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the Disputed Domain Name is Russian. On June 13, 2024, the Complainant requested English to be the language of the proceeding. On the same date, the Respondent sent an email communication to the Center in English stating, inter alia, “Okay, let it be English”.

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 in English and Russian of the Complaint, and the proceedings commenced on June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. The Response was filed with the Center on June 24, 2024.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on July 22, 2024. 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 operates in the beverage industry, specializing in designing, marketing, and selling energy drinks and related products. Established as Hansen Beverage Company before rebranding to Monster Energy Company on January 5, 2012, the Complainant has been widely recognized globally and has expanded into various products including clothing, automotive products, and sports equipment, supported by extensive marketing and sponsorships and is one of the leading energy drink brands worldwide, with significant sales and a strong presence on social media.

The Complainant holds many trademark registrations that consist of or contain the terms “MONSTER ENERGY” (the “MONSTER ENERGY trademark”) in numerous jurisdictions around the world, including, but not limited to the International Registration No. 1048069 for M MONSTER ENERGY registered on June 28, 2010, designating, inter alia, Ukraine, where the Respondent resides, in classes 9, 16, 18, 25, and the United States Trademark Registration No. 4,036,681 registered on October 11, 2011, in class 32.

Furthermore, the Complainant owns a domain name consisting of the words “monster energy”, <monsterenergy.com>, registered on February 22, 2002, which is used for its official website.

The Disputed Domain Name was registered on May 18, 2024. As of the date of this Decision and as per the evidence submitted by the Complainant, the Disputed Domain Name is resolving to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

The Complainant argues that the Disputed Domain Name is confusingly similar to its MONSTER ENERGY trademark because it incorporates the trademark in its entirety. The addition of a hyphen between “monster” and “energy” does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s trademark.

Moreover, the Complainant submits that the addition of the generic Top-Level Domain (“gTLD”) “.store” in the Disputed Domain Name is disregarded under the first element confusing similarity test.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Complainant argues that the Respondent has no rights or legitimate interests in the Disputed Domain Name because the Complainant never authorized its registration. The Respondent is neither an agent of the Complainant nor in any contractual relationship with the Complainant.

Additionally, the Complainant has not licensed or authorized any person or entity to register the Disputed Domain Name. The Complainant asserts that in the absence of any license or permission, there can be no bona fide or legitimate use of the Disputed Domain Name by the Respondent.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

The Complainant asserts that the Respondent knew of the Complainant's MONSTER ENERGY trademark when registering the Disputed Domain Name. Furthermore, the MONSTER ENERGY trademark is well known internationally. It is highly unlikely that the Respondent chose the Disputed Domain Name without intending to invoke an association with the Complainant.

The Complainant argues that the Respondent registered and used the Disputed Domain Name with the intent to attract Internet users by creating a likelihood of confusion with the Complainant's MONSTER ENERGY trademark regarding the source, sponsorship, affiliation, or endorsement of the website. Additionally, by using the ".store" gTLD and incorporating the Complainant's trademark in the Disputed Domain Name, the Respondent created a false impression that the website is associated with the Complainant's business.

The Complainant contends that the passive holding of the Disputed Domain Name, which leads to a non-configured server page, deprives the Complainant of legitimately reflecting its mark. This, along with the intention to disrupt the Complainant's business and attract Internet users through confusion, constitutes bad faith registration and use.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

## **B. Respondent**

The Respondent sent several emails to the Center in Russian and English stating that the Respondent is unaware of the Complainant and registered the Disputed Domain Name for selling unrelated vitamins. The Respondent submits that the Disputed Domain Name was chosen independently, and has never been used since its registration.

In addition, the Respondent asserts that the website under the Disputed Domain Name is empty, without any content, products, logos, or advertisements. The Disputed Domain Name is not indexed by search engines and does not have any links or ads. The Respondent states that its actions have not harmed or compromised the Complainant's trademark or products.

The Respondent was willing to transfer the Disputed Domain Name to the Complainant and apologized for the confusion. In the Response filed on June 24, 2024, the Respondent stated, however, that the Disputed Domain Name was used "legitimately on a noncommercial basis, and in fact, [...] not used at all".

## **6. Discussion and Findings**

### **Further Procedural Considerations**

According to paragraph 10 of the Rules, Panel is mandated to ensure that the Parties are treated equitably, with each Party receiving a fair opportunity to present its case, while also ensuring that the administrative proceeding is conducted expeditiously.

The Registrar has indicated that the Respondent's address is in Ukraine, a country currently affected by international conflict as of the date of the Decision, potentially impacting case notifications. The Panel must decide, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

After carefully considering the circumstances, the Panel has decided to move forward with the case. The Panel finds that the Complaint notification was successfully sent to the Respondent's email address provided by the Registrar, with several email communications and the Response sent to the Center from the Respondent, which indicate that the Respondent has actually received the Complaint, had the opportunity to formulate and file a Response in the administrative proceeding and did so.

The Panel concludes that the Respondent has been afforded a fair opportunity to present its case. To ensure that the administrative proceeding progresses with due expedition, the Panel will proceed to a Decision.

### **Language of the Proceeding**

The language of the Registration Agreement for the Disputed Domain Name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the Respondent used English words "monster" and "energy" in the Disputed Domain Name, and the gTLD ".store" is also an English word; (ii) the Complainant and its representatives are not fluent in Ukrainian or Russian, thereby conducting the proceeding in Ukrainian or Russian would cause additional expenses and undue delays, as well as increase the risk of mistranslation or misunderstanding of critical statements and communications; and (iii) an Internet search of the Complainant's MONSTER ENERGY trademark shows numerous references to the trademark in English.

After the notification of the Complaint, the Respondent sent several email communications to the Center in Russian and English, notably the email dated June 13, 2024, stating its agreement that English be the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or 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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the Complainant has established rights to the MONSTER ENERGY trademark, with registrations in multiple countries including Ukraine, where the Respondent resides, predating the registration of the Disputed Domain Name.

The entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Despite the insertion of a hyphen between “monster” and “energy”, the Panel concludes that this does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s trademark, as per the Policy. [WIPO Overview 3.0](#), section 1.8.

Furthermore, the Panel determines that the inclusion of the gTLD “.store” in the Disputed Domain Name is disregarded, as it is a technical necessity. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, based on the Complainant’s submissions, that the Respondent has not been granted any license, permission, or authorization to use the Complainant’s MONSTER ENERGY trademark. Furthermore, there is no evidence presented to indicate that the Respondent possesses any registered or unregistered trademark rights in any jurisdiction concerning “MONSTER ENERGY” phrase. Consequently, the Panel finds that the Respondent lacks rights in the Disputed Domain Name.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds no evidence indicating that the Respondent, whether as an individual, business, or entity, is commonly known by the Disputed Domain Name, nor is the Respondent making a legitimate noncommercial or fair use of it. In fact, by incorporating the Complainant's distinctive trademark in its entirety within the Disputed Domain Name, the composition of the Disputed Domain Name affirms the Respondent's intention of taking unfair advantage of the likelihood of confusion between the Disputed Domain Name and the Complainant as to the origin or affiliation of the website at the Dispute Domain Name, contrary to the fact, which cannot constitute fair use.

In addition, when a domain name closely matches a complainant's trademark, this is an indication of potential confusion or implied endorsement. In this present case, the Disputed Domain Name fully replicates the Complainant's MONSTER ENERGY trademark, without any distinctive alterations. Furthermore, the inclusion of the ".store" gTLD may increase confusion by suggesting a connection to the Complainant's sale efforts. Considering the Complainant's broad presence, it is likely that consumers might mistakenly link the Disputed Domain Name to the Complainant. Therefore, the Panel confirms the findings that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

Based on the foregoing findings, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(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 website or other online 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."

In the present case, the Panel notes that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith.

The Panel notes that the Complainant holds several registrations for MONSTER ENERGY trademark in multiple countries, including Ukraine, where the Respondent is based. These trademark registrations precede the registration date of the Disputed Domain Name by a significant margin.

In this case, the Panel finds it highly unlikely that the Respondent was unaware of the Complainant and its trademark rights at the time of registering the Disputed Domain Name. In fact, the Disputed Domain Name in question incorporates the MONSTER ENERGY trademark in its entirety with only a hyphen added and is paired with the ".store" gTLD that relates to the Complainant's business activities. The Complainant's trademarks had been in use for several years prior to the registration of the Disputed Domain Name, and previous UDRP decisions have affirmed the prominence of the Complainant's trademark (see, e.g., *Monster Energy Company v. Domain Administrator, Robot Energy Limited*, WIPO Case No. [D2016-0202](#); *Monster*

*Energy Company v. Cai Manyi Manyicai*, WIPO Case No. [D2016-0301](#); *Monster Energy Company v. Tank Li*, WIPO Case No. [D2016-1184](#)). The extensive use and recognition of the MONSTER ENERGY trademark, suggest that the Respondent was likely aware of the Complainants' trademark at the time of registration. This awareness, combined with the specific choice to use the trademark in the Disputed Domain Name, indicates an intent to exploit the Complainants' established reputation.

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. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith. It is more likely than not that the Respondent was aware of the MONSTER ENERGY trademark's reputation at the time of registration and intentionally combined the trademark with the ".store" gTLD to imitate the Complainants' business activities. Thus, the Panel 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 Complainant has established 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 <monster-energy.store> be transferred to the Complainant.

*/Pham Nghiem Xuan Bac/*

**Pham Nghiem Xuan Bac**

Sole Panelist

Date: August 5, 2024