

## **ADMINISTRATIVE PANEL DECISION**

### **Monster Energy Company v. Kenna James Case No. D2022-4472**

#### **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 Kenna James, United States.

#### **2. The Domain Name and Registrar**

The disputed domain name <unleashthebeast.info> is registered with GoDaddy.com, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2022. On November 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 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 (“Unknown Registrant”) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 24, 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 November 30, 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 December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2023.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on January 9, 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 a family of famous UNLEASH-formative marks, including, for example UNLEASH THE BEAST!, UNLEASH THE ULTRA BEAST!, UNLEASH THE DRAGON! ("UNLEASH Marks"). The Complainant has used the UNLEASH Marks in commerce since at least as early as 2002. The Complainant owns more than 640 registered marks worldwide that include "UNLEASH" and "BEAST", in a total of at least 160 countries.

In 2003, the Complainant began selling its MONSTER ENERGY line of beverages internationally, with almost every can featuring the UNLEASH THE BEAST! mark. Worldwide retail sales now exceed 6 billion cans per year with estimated retail sales exceeding USD13 billion per year.

The Complainant sells or has sold its Monster drinks bearing its UNLEASH THE BEAST! mark to consumers throughout the world. In addition to beverages, the Complainant has used and continues to use UNLEASH THE BEAST! in connection with various items, including but not limited to, entertainment services, including video games; clothing; accessories; bags; sports gear; helmets; stickers; and decals.

The Complainant owns numerous trademark registrations global which incorporate the UNLEASH THE BEAST! including the following United States Registrations:

UNLEASH THE BEAST! Reg. No. 2769363 Registered September 30, 2003  
UNLEASH THE BEAST! Reg. No. 4975822 Registered June 14, 2016.

<unleashthebeast.info> the ("Disputed Domain Name") was registered on September 17, 2022.

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

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

The Disputed Domain Name incorporates Complainant's UNLEASH THE BEAST! mark in its entirety and is followed by the Top-Level Domain suffix ".info." The most distinguishing feature of the domain name, *i.e.*, the term "UNLEASHTHEBEAST", is identical to the Complainant's mark.

The Complainant has not authorized, licensed, or permitted the Respondent, nor any person or entity, to use the UNLEASH THE BEAST! mark in connection with registering a domain name. There is thus no evidence that the Respondent has been or was commonly known by the Disputed Domain Name.

The recognized success of the Complainant's UNLEASH THE BEAST! branded products show that the mark is well known. The Respondent obviously knew of Complainant's UNLEASH THE BEAST mark when it registered the Disputed Domain Name.

The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Complainant never authorized the registration of the Disputed Domain Name. The Respondent is not and has never been an agent of the Complainant, nor is there any contractual relationship between the Complainant and the Respondent. The Complainant has not licensed or otherwise authorized any person or entity to apply for the Disputed Domain Name.

It is clear that the Respondent registered the Disputed Domain Name in bad faith. The Complainant's UNLEASH THE BEAST! mark became well-known in the United States and internationally well before the registration date of the Disputed Domain Name. The Complainant's United States trademark registrations for its UNLEASH THE BEAST! marks first issued in 2003, 19 years before the Respondent registered the Disputed Domain Name in 2022.

The Respondent is not making any use of the Disputed Domain Name and it leads to an inactive (pay per click) website. In addition, the hyperlinks present on the inactive website link potential consumers to either the Complainant's page, or to pages providing goods competitive with those of the Complainant.

The Respondent's passive holding of the disputed domain name, which is identical to the Complainant's famous UNLEASH THE BEAST! mark is evidence of bad faith registration and use under Policy 4(a)(iii). Marks that have a high degree of inherent or acquired distinctiveness are entitled to a greater scope of protection than others.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated it owns registered trademark rights in the UNLEASH THE BEAST! trademark in the United States and throughout the world.

The UNLEASH THE BEAST trademark is clearly recognizable in the disputed domain name, and the generic Top Level Domain ("gTLD") ".info" is typically disregarded under the first element confusing similarity test. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition ("[WIPO Overview 3.0](#)"); see also, *Helpful Things, LLC v. Withheld for Privacy Purposes / Sirikwan Burnett*, WIPO Case No. [D2021-1495](#)

Accordingly, for the purposes of the Policy, the Disputed Domain Name is identical to a mark in which the Complainant has rights.

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

The Complainant has presented a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Respondent has not been commonly known by the Disputed Domain Name. The fact that the Respondent obtained the disputed domain name almost twenty years after the Complainant had begun using its internationally recognized UNLEASH THE BEAST! mark, indicates to the Panel that the Respondent sought to piggyback on the mark.

After a complainant has made a *prima facie* case, the burden of production shifts to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name, and rather the nature of the Disputed Domain Name itself, being identical to the Complainant's well-known UNLEASH THE BEAST! mark, without any content other than pay-per-click links suggests that it was registered to falsely suggest sponsorship or endorsement by the Complainant.

In absence of any Response whatsoever let alone evidence rebutting the Complainant's *prima facie* case indicating the Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The disputed domain name was registered years after the Complainant first registered and used its UNLEASH THE BEAST! mark. The evidence provided by the Complainant with respect to the extent of use and global fame of its UNLEASH THE BEAST! mark combined with the absence of any evidence provided by the Respondent to the contrary, suggests to the Panel that, at the time the Disputed Domain Name was registered, the Respondent knew of the Complainant's widely-known UNLEASH THE BEAST! mark.

The fact that the Disputed Domain Name does not resolve to a website other than a GoDaddy parking page and is in effect being passively held does not prevent a finding of bad faith. When a domain name is being so held, the question of bad faith use does not squarely fall under one of the non-exhaustive factors set out in paragraph 4(b) of the Policy. However, section 3.3 of the [WIPO Overview 3.0](#), instructs that panelists should examine the totality of the circumstances in each case and that the following factors that have been considered relevant in applying the passive holding doctrine: "(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."

Here the Complainant submitted evidence that its fanciful UNLEASH THE BEAST! mark has been used for more than 20 years globally. The Respondent has not offered any evidence to rebut this conclusion, nor has it provided any evidence of its intended use of the disputed domain name. Given these circumstances, the Panel finds the requirement of paragraph 4(a)(iii) of the Policy that the Disputed Domain Name was registered and is being used in bad faith by the Respondent is met.

Accordingly, the Panel finds that the 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.info> be transferred to the Complainant.

*/Colin T. O'Brien/*

**Colin T. O'Brien**

Sole Panelist

Date: February 1, 2023