

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. FEN HU

Case No. D2023-1377

1. The Parties

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

The Respondent is FEN HU, China.

2. The Domain Name and Registrar

The disputed domain name <unleashthebeast.xyz> is registered with CV. Jogjacamp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 April 7, 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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 5, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on May 24, 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 has rights in the mark UNLEASH THE BEAST! and owns numerous trademark registrations around the world, *inter alia*

- African Intellectual Property Organization Trademark Registration No 83734, registered on July 31, 2015;
- China Trademark Registration No 885429, registered on April 28, 2006;
- European Union Trademark Registration No 5093174, registered on March 19, 2007;
- United States Trademark Registration No 4975822, registered on June 14, 2016 (Annex D to the Complaint).

Moreover, the Complainant has registered the domain names <unleashthebeast.com> on July 18, 2001 and <unleashthebeast.cn> on January 10, 2017 (Annex O to the Complaint).

The disputed domain name was registered on March 4, 2023 (Annex A to the Complaint); it resolved to a website where it was offered for sale (Annex N to the Complaint). Currently, the disputed domain name is not used.

5. Parties' Contentions

A. Complainant

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!, (collectively, the "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.

The Complainant owns moreover two domain names featuring its UNLEASH THE BEAST! mark in its entirety, <unleashthebeast.com> and <unleashthebeast.cn>.

The Complainant extensively uses its UNLEASH marks in connection with apparel, merchandise and on product samplings, at live events, including music festivals sponsored by the Complainant, and in connection with other products and services. The UNLEASH marks are well-known throughout the United States and internationally in connection with a wide variety of goods and services. In addition to its extensive common law rights, the Complainant owns hundreds of registrations around the world.

The Complainant uses the UNLEASH marks in connection with the Complainant's Monster drinks since 2002. The UNLEASH marks, and the UNLEASH THE BEAST! mark specifically, have developed into famous identifiers of the Complainant's high-quality line of Monster drinks. The Complainant sells or has sold its Monster drinks bearing its' UNLEASH marks to consumers in many countries.

Since 2002, in addition to beverages, the Complainant has used and continues to use its UNLEASH THE BEAST! mark and other UNLEASH marks 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's MONSTER ENERGY brand bearing its UNLEASH THE BEAST mark and other UNLEASH marks 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.

The Complainant owns the domain name <monsterenergy.com>, at which it launched its website on August 19, 2003. The website prominently displays the UNLEASH THE BEAST! mark and receives thousands of

unique visitors each month. Additionally, the presence of the Complainant's UNLEASH THE BEAST! mark on social media websites has expanded dramatically – as of June 2022, the Monster Facebook page had more than 25 million “likes”, and prominently displays the UNLEASH THE BEAST! mark.

The disputed domain name is identical or at least confusingly similar to the Complainant's UNLEASH THE BEAST! mark: It incorporates the Complainant's UNLEASH THE BEAST! mark in its entirety and is followed by the Top-Level Domain suffix “.xyz”. The most distinguishing feature of the domain name, *i.e.*, the term “UNLEASHTHEBEAST”, is identical to the Complainant's mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name: The Complainant has not authorized, licensed, or permitted the Respondent, or any person or entity, to use the UNLEASH THE BEAST! mark in connection with registering a “.xyz” domain name. The Respondent has not been or was not commonly known by the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent registered and is using the disputed domain name in bad faith: Because of the fame of the Complainant's mark, established long before the Respondent's registration of the disputed domain name, the Respondent obviously knew of the Complainant's UNLEASH THE BEAST! mark when it registered the disputed domain name. The Respondent moreover used the disputed domain name in bad faith: The disputed domain name leads to a landing page offering the domain name for sale or lease; the Respondent is not making any *bona fide* use of the disputed domain name and was aware of the Complainant's rights in its UNLEASH THE BEAST! mark when registering the disputed domain name. Accordingly, for all these reasons, the Respondent's activities constitute bad faith registration and bad faith use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark UNLEASH THE BEAST!.

In the present case, the disputed domain name <unleashthebeast.com> is confusingly similar to the UNLEASH THE BEAST! mark in which the Complainant has rights since the Complainant's mark is clearly

recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) or omission of letters, spaces between words or punctuation marks (technically conditioned or not) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is the case at present: The omission of the punctuation mark "!" at the end and the spaces between the words UNLEASH THE BEAST in the disputed domain name are technically conditioned and do not prevent a finding of confusing similarity with regard to the Complainant's mark.

Finally, it has also long been held that generic or country-code Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Therefore, the Panel finds that the Complainants have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's mark UNLEASH THE BEAST! in its entirety, cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainants have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well-known registered trademark UNLEASH THE BEAST!, which is registered and used in many jurisdictions around the world for years. Moreover, the Complainant owns the domain names <unleashthebeast.com> and <unleashthebeast.cn> for many years.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights which were established long before the registration of the disputed domain name; these facts lead to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's trademark UNLEASH THE BEAST! entirely.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name is also being used in bad faith: Although there is no evidence that the disputed domain name has been actively used or resolved to a website with substantive content, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – the non-use of a domain name (including a blank or “coming soon” or resolving to a parking page) would not prevent a finding of bad faith, since also inaction is within the concept of paragraph 4(a)(iii) under the doctrine of passive holding (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel concludes that the disputed domain name is being used in bad faith, putting emphasis on the following:

- the Complainant's trademark UNLEASH THE BEAST! is well-known globally with a strong internet presence;
- the disputed domain name resolves to a website, where it was offered for sale;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under 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.xyz> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: June 7, 2023