

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Luke Barwikowski Case No. D2023-2286

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 Luke Barwikowski, United States.

2. The Domain Name and Registrar

The disputed domain name <unleashthebeast.events> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2023. On May 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 26, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on May 30, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 2, 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 Respondent of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. On June 5, 2023, Respondent sent an informal reply to the Notification of Complaint requesting settlement discussions with Complainant and alleging use of the domain name for his gaming company with “documented the use of [the disputed] domain & branding that goes back several years.” On June 13, 2023, Complainant requested a 30-day suspension of the proceedings. On June 13, 2023, Respondent sent a further informal reply stating “Ok, I will transfer the domain for whatever you think is fair - just let me know.” On July 13, 2023, the Center sent Notification of Suspension providing a 30-day

suspension ending on July 13, 2023. On July 13, 2023 the Complainant requested the reinstatement of the proceedings. On July 14, 2023 the Center reinstated the proceedings with a new Response due date of July 26, 2023. Respondent did not submit any formal response. Accordingly, the Center notified Respondent of the Commencement of Panel Appointment Process on August 1, 2023.

The Center appointed Phillip V. Marano as the sole panelist in this matter on August 11, 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

Complainant is in the business of designing, creating, developing, marketing, and selling beverages as well as related apparel and merchandise. Complainant provides information about its goods through its official <beastunleashed.com> domain name and website. Complainant owns valid and subsisting registrations for its UNLEASH-formative trademarks, including UNLEASH THE BEAST!, UNLEASH THE ULTRA BEAST, UNLEASH THE DRAGON (collectively Complainant's "UNLEASH trademarks") in numerous countries, including the trademark for UNLEASH THE BEAST! (Reg. No. 2,769,364) in the United States, registered on September 30, 2003 with the earliest priority dating back to April 16, 2002.

Respondent registered the disputed domain name on September 17, 2021. At the time this Complaint was filed, the disputed domain name resolved to a Registrar parking page that read, "This domain was recently registered at Namecheap. Please check back later!", and included hyperlinks to "Related Searches" for things like "Monster Energy Drinks" and "Energy Drinks" which lead to Complainant's website as well as websites for Complainant's competitors.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the UNLEASH trademarks and has adduced evidence of trademark registrations in numerous regions and countries around the world including in the United States, with earliest first use priority dating back to 2002. The disputed domain name is confusingly similar to Complainant's UNLEASH trademarks, according to Complainant, because it incorporates Complainant's UNLEASH THE BEAST! Mark in its entirety and is followed by the generic Top-Level Domain ("gTLD") suffix ".events", thereby suggesting that the disputed domain name is operated or sponsored by Complainant.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any authorization, license, or permission from Complainant for Respondent to use its UNLEASH THE BEAST! trademark; the lack of any evidence that Respondent is known by the disputed domain name; and resolution of the disputed domain name to an inactive website.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the well-known nature of Complainant's UNLEASH THE BEAST! trademark; the identity between Complainant's UNLEASH THE BEAST! trademark and the disputed domain name; and Respondent's passive holding of the disputed domain name and its resolution to an inactive website with hyperlinks to either Complainant's page or pages providing goods competitive with those of Complainant.

B. Respondent

Respondent did not formally reply to Complainant's contentions. Notwithstanding the informal email responses sent by Respondent, no evidence was ever provided to support Respondent's alleged "documented the use of [the disputed] domain & branding that goes back several years."

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

Panels typically treat a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, *e.g.*, simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), Section 4.3. While still taking the communications into account, the Panel views Respondent's submissions, asserting "documented the use of [the disputed] domain & branding that goes back several years", as akin to a formal respondent default.

Although Respondent did not formally reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Loma Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that its UNLEASHED trademarks, and in particular its UNLEASH THE BEAST! trademark, has been registered in numerous jurisdictions with priority dating back to April 16, 2002. Thus, the Panel finds that Complainant's rights in the UNLEASH THE BEAST! trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's UNLEASH THE BEAST! trademark. In this Complaint, the disputed domain name is identical to Complainant's UNLEASH THE BEAST! trademark because, disregarding the ".event" gTLD, the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".event" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is self-evident that Respondent, identified by Whois data for the disputed domain name as “Luke Barwikowski”, is not commonly known by the disputed domain name or Complainant’s UNLEASH THE BEAST! trademark. Moreover, no evidence of rights or legitimate interests was provided by Respondent, despite Respondent’s informal email response that Respondent had “documented the use of [the disputed] domain & branding that goes back several years.” To the contrary, based on the record, it is clear to the Panel that Respondent had the disputed domain name configured to resolve to the Registrar’s pay-per-click parking page.

Service of pay-per-click advertisements through the disputed domain name which attempts to trade off the goodwill of Complainant cannot constitute any *bona fide* offering of goods or services using the disputed domain name. [WIPO Overview 3.0](#), section 2.9 (Unless “genuinely related to the dictionary meaning” of the disputed domain, “[pay-per-click] links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of Complainant’s mark or otherwise mislead Internet users.”) See, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#) (use of a domain name in connection with a web page that “only contains advertisements as sponsored links” is “for presumed commercial gain”); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#) (“a parking website containing sponsored links... cannot be considered either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant’s goodwill by misleading Internet users to its website”); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (a disputed domain name “pointing to a website featuring PPC [pay-per-click] links... could not be construed as a *bona fide* or legitimate noncommercial or fair use”). In this Complaint, Respondent has configured the disputed domain name to resolve to Registrar’s pay-per-click parking page replete with sponsored links to Complainant and Complainant’s competitors.

This is especially the case where a disputed domain name and its use is so obviously connected with a complainant and its products, the very use, let alone attempts to monetize, by a registrant with no connection to a complainant suggests opportunistic bad faith. The Panel concludes from the record that Respondent had Complainant’s UNLEASH THE BEAST! Trademark in mind when registering the disputed domain name, and that Respondent most likely registered domain name in order exploit and profit from Complainant’s trademark rights. Indeed, a respondent who knowingly adopted a third party’s well-known mark as a domain name cannot claim the benefit of paragraph 4l(i) of the Policy to establish rights to the domain name based on its mere use of the domain name to offer goods or services prior to the notice of a dispute. *Scania CV AB v. Leif Westlye*, WIPO Case No. [D2000-0169](#); see also *Drexel University v. David Brouda*, WIPO Case No. [D2001-0067](#) (rights or legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the complainant).

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The mere registration of a domain name that is identical to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (particularly where no conceivable good faith use could be made). [WIPO Overview 3.0](#), Section 3.1.4. Complainant has adduced evidence of recognition of Complainant's trademarks, including its UNLEASH THE BEAST! trademark, and cited several WIPO panel determinations in agreement that Complainant's trademarks are considered to be "well-known" or "famous." See e.g., *Monster Energy Company v. Kenna James*, WIPO Case No. [D2022-4472](#) ("[T]he 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."); with respect to Complainant's MONSTER ENERGY trademark, which Complainant argues appears within close proximity to Complainant's UNLEASH THE BEAST! trademark on its product packaging see also *Monster Energy Company v. Whois Privacy Protection Service by onamae.com / Hideki Nakayama*, WIPO Case No. [D2020-3216](#); *Monster Energy Company v. Domains By Proxy, LLC / Peter Malandrinos*, WIPO Case No. [D2021-0964](#); *Monster Energy Company v. Vytautas*, WIPO Case No. [D2021-1576](#) (; *Monster Energy Company v. Nabiev Ravshan*, WIPO Case No. [D2021-1804](#); and *Monster Energy Company v. Whois Privacy Protection Service, Inc. / Artsiom Dryneuski*, WIPO Case No. [D2021-4064](#); *Monster Energy Company v. Szymon Nowak*, WIPO Case No. [D2022-3010](#). As such, and noting the use to which it has been put, the Panel finds it is unconceivable that Respondent could have registered the disputed domain name without knowledge of Complainant's UNLEASH THE BEAST! trademark, without any intention to benefit from confusion with it through association with hyperlinks to Complainant and Complainant's competitors.

Such third-party generated material, such as parking websites with pay-per-click links, cannot be disclaimed by Respondent to prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5 ("A respondent cannot disclaim responsibility for content appearing on the website associated with its domain name" regardless of whether "such links [are] generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that respondent itself may not have directly profited...."). See *SAP SE v. Domains by Proxy, LLC / Kamal Karmakar*, WIPO Case No. [D2016-2497](#) ("It is well established that where a domain name is used to generate revenue in respect of 'click through' traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith ... Revenue will be generated by such visitors clicking on the provided links and it does not matter whether that revenue accrues to the Respondents or the operator of the parking site") (internal citations omitted). Here, Respondent has misappropriated Complainant's UNLEASH THE BEAST! trademark in the disputed domain name and configured it to resolve to the Registrar's parking website featuring pay-per-click advertisements to "Related Searches" for things like "Monster Energy Drinks" and "Energy Drinks" which led to Complainant's website as well as websites for Complainant's competitors.

In view of the foregoing, the Panel concludes that 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, <unleashthebeast.events>, be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: August 29, 2023