

## **ADMINISTRATIVE PANEL DECISION**

### **Red Bull GmbH v. Fernando Lopez Palomeque Case No. D2023-2599**

#### **1. The Parties**

The Complainant is Red Bull GmbH, Austria, represented by TALIENS, Germany.

The Respondent is Fernando Lopez Palomeque, Spain

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

The disputed domain name <redbullshop.net> is registered with Arsys Internet, S.L. dba NICLINE.COM (the "Registrar").

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 16, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 June 21, 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 amendment to the Complaint on June 22, 2023.

The Center verified that the Complaint together with the amendment to the 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 June 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 2, 2023.

On August 9, 2023, the Center received a communication from a person identified as "Fernando Lopez", stating the following in Spanish: "Acabo de ver todos esto y me deja bastante sorprendido. No tenéis forma de llegar a un acuerdo??" An English translation of the Spanish text is: ("I just saw all this and it leaves me

quite surprised". "You have no way to reach an agreement"), but no reply to the Complainant's contentions was received.

The Center appointed Martin Michaus Romero as the sole panelist in this matter on August 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 the producer of the worldwide famous RED BULL energy drink since 1987 and internationally since 1992. Currently the RED BULL energy drink is sold in 174 countries over the world. Its sales volume has grown from 113 million serving units (250ml) in 1994 to over 11,6 billion worldwide in 2022.

In the European Union, the sales volumes have grown from approximately 1,79 billion serving units (2013) to 2,37 billion (2018), 2,58 billion (2019), 2,66 billion (2020), 2,63 (2021) and 3,331 billion (2022).

The Complainant has acquired a reputation in the media sector as an organizer of sports, music, fashion, media house and cultural events.

It has a RED BULL website under "www.redbullshop.com", and advertises and commercializes RED BULL branded products also connected to the teams sponsored and/or owned by the Complainant or to the events organized and/or sponsored by him. It has several official teamlines, such as Oracle Red Bull Racing (Formula 1 Team) available at "www.redbullshop.com/en-int/c/rbr-official-teamline/", Red Bull KTM Racing Official Teamline "www.redbullshop.com/en-int/c/ktm-official-teamline/", the Official Timeline of SCUDERIA ALPHA TAURI (Formula 1 Team), available at "www.redbullshop.com/en-int/c/sat-official-teamline/". The jerseys of professional soccer clubs it is sponsoring or owning, for instance, RB Leipzig, available at "www.redbullshop.com/en-int/c/rbl-official-kit-by-nike/", and many other Red Bull branded products and merchandising.

The Complainant is the owner of multiple registrations and applications of trademarks consisting of or containing the RED BULL mark and covering an extensive range of goods and services such as:

- a) International Trademark No 641378 RED BULL with priority date September 1, 1994, designating amongst others Spain and registered amongst others for food goods in class 32,
- b) European Union Trade Mark No 00052803 RED BULL registered on March 16, 2001, amongst other for goods in class 32.

It also attached several registrations, which significantly predate the registration date of the disputed domain name, which is November 4, 2010.

The Complainant run its business under the company RED BULL GmbH, since 1987 and internationally since 1992. It operates its main website under the domain name <www.redbull.com> (which has been registered on January 5, 1998). It also owns domain name <redbullshop.com>, which resolves to a webpage in which the Complainant advertises and commercializes Red Bull branded.

Previous UDRP-panels have recognized that the Complainant's RED BULL trademark is internationally famous, since 2000, and has a very strong reputation. It is widely known all over the world.

The disputed domain name redirects to a website where RED BULL branded products are being sold.

## 5. Parties' Contentions

### A. Complainant

The Complainant stated that:

- a) The disputed domain name is confusingly similar to his trademarks since it contains the word marks RED BULL, entirely. It is also confusingly similar to his <redbullshop.com> domain name.
- b) Has not licensed or otherwise permitted the Respondent to use any of its trademarks RED BULL, any variations or combinations thereof, or to register or use any domain incorporated any of those marks, any variations or combination thereof.
- c) The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. It is used for commercial purposes, offering products amongst them, many RED BULL branded products.
- d) The Respondent sells not only RED BULL labeled products but also many other labelled products and the website does not disclose at all the relationship, sponsorship or endorsement by the Complainant.
- e) The Respondent is not commonly known by the disputed domain name.
- f) The disputed domain name was registered on November 4, 2010, and currently redirects to the domain name <www.masterlap.com>, which in turn resolves to a website in Spanish language, describing itself as "Tienda Oficial de Fórmula1 y Moto GP", corresponding to formula 1 and MotoGP Official Store, in which clothing and accessories are advertised and commercialized.
- g) On March 23, 2023, the Complainant sent a cease and desist letter to the Respondent in order to solve the matter on amicably, but has received no reply to this request.

### B. Respondent

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

## 6. Discussion and Findings

### Language of proceedings

The Complainant submitted its Complaint in English and requested English as the language of the administrative proceeding. The language of the registration agreement is Spanish.

Paragraph 11(a) of the Rules, states that unless otherwise agreed by the Parties, or specified otherwise in the registration agreement the language of the administrative proceeding should be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Panel should ensure fairness in the language selection by giving full consideration to the parties' level of comfort with each language, the expenses that may be incurred, the possibility of a delay in the proceeding if translations are required and other relevant factors.

The Complainant claims that the disputed domain name incorporates the Complainant's mark RED BULL and the English term "shop", which strongly suggests that the Respondent has knowledge of English. The Complainant is located in Austria and has no knowledge of Spanish, and adds that the translation of the Complaint would only unduly burden the Complainant and unnecessarily delay the proceedings.

The Respondent did not object to the Complainant's request and did not raise any objection about the language of the proceeding.

Considering the arguments provided by the Complainant, the no objection from the Respondent, and according to paragraph 10 of the Rules that it should be an expeditious procedure, the Panel determines that the language of the proceeding shall be English.

### **Substantive elements of the Policy**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

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

The Complainant has submitted evidence of its rights in the RED BULL trademark. The disputed domain name is confusingly similar to the Complainant's RED BULL trademark. The disputed domain name reproduces the Complainant's trademark RED BULL in its entirety.

The addition of the term "shop" does not prevent a finding of confusing similarity between the disputed domain name and the RED BULL trademark.

The Panel finds that the Complainant established the first element under paragraph 4(a)(i) of the Policy.

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

The Respondent has not received permission or authorization to use the Complainant's trademark. The Respondent did not reply to the Complainant's contentions, therefore has not provided any evidence to demonstrate anything to the contrary. It should be pointed out that nothing in the available record indicates that the Respondent is an individual, business, or corporation commonly known by the name "red bull".

Furthermore, the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services, nor is making a legitimate noncommercial or fair use that might give rise to rights or legitimate interests in the disputed domain name.

The Respondent sells not only RED BULL labelled products but also many other labelled products, and the website does not disclose at all the relationship between the Respondent and the Complainant. Everything suggests sponsorship or endorsement by the Complainant.

There is also no evidence that the Respondent owned a trademark corresponding to the disputed domain name.

According to the Complainant, the Respondent has chosen not to respond to the cease and desist letter sent by the Complainant's before filing the Complaint. He also did not respond to the Complainant's contentions nor took any steps to counter the *prima facie* case established by the Complainant.

The Panel finds that the Complainant established the second element under paragraph 4(a)(ii) of the Policy.

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

According to the evidence submitted by the Complainant, it is clear to the Panel that the registration and the use of the disputed domain name has been in bad faith, by incorporating the RED BULL trademark to intentionally attract Internet users for commercial gain. The inclusion of the word “shop” in the disputed domain name, along with the Complainant’s trademark, attempts to deceive Internet users or lead them to believe that the disputed domain name is operated by the Complainant or at least to take unfair advantage of the confusing similarity of the disputed domain name with the Complainant’s trademark RED BULL and the Complainant’s domain name <redbullshop.com>.

The Respondent has demonstrated, by registering the disputed domain name, an intent to capitalize on the goodwill of the Complainant’s trademark. Furthermore, the Respondent intentionally attempted to attract for commercial gain Internet users to his own website “www.masterlap.com” or other online location by creating a likelihood of confusion with the Complainant’s RED BULL trademark. These activities constitute, in the Panel’s view, clear evidence of registration and use of the disputed domain name in bad faith.

The Complainant’s RED BULL trademark registrations predate the registration of the disputed domain name and the Respondent knew or should have known of the Complainant’s trademark rights, considering their notoriety and worldwide reputation. Therefore, it is unlikely that the Respondent was not aware of the Complainant’s rights.

Considering that:

- 1) The disputed domain name is confusingly similar to the well-known trademark RED BULL;
- 2) the Respondent was fully aware of the Complainant’s business activities and its RED BULL trademark at the time of registration of the disputed domain name;
- 3) the Respondent did not reply to the Complainant’s cease and desist letter sent before filing the Complaint nor to the Complainant’s contentions upon filing;
- 4) the disputed domain name points to the website “www.masterlap.com” in order to attract Internet users to the Respondent’s website, the Panel finds that registration and use of the disputed domain name were in bad faith.

The Respondent’s use of the disputed domain name also negatively affects the Complainant’s online presence and disrupts the Complainant’s business. See paragraphs 4(b)(iv) and 4(b)(iii) of the Policy.

The Panel finds that the Complainant established the third element 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 <redbullshop.net> be transferred to the Complainant.

*/Martin Michaus Romero/*  
**Martin Michaus Romero**  
Sole Panelist  
Date: August 23, 2023