

## **ADMINISTRATIVE PANEL DECISION**

RED BULL GMBH v. rudi hartono

Case No. D2023-3431

### **1. The Parties**

The Complainant is RED BULL GMBH, Austria, represented by TALIENS Partnerschaft von Rechtsanwälten mbB, Germany.

The Respondent is rudi hartono, Indonesia.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 16, 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 August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. The Respondent did not submit any Formal response. However, email communications were received by email from the Respondent on August 30, 2023, and September 7, 2023, requesting compensation for the transferring of the disputed domain name. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 19, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 26, 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**

According to information in the Complaint, the Complainant is the producer of the RED BULL energy drink, which was first sold in Austria in 1987 and internationally since 1992. Currently, the RED BULL energy drink is sold in 174 countries all over the world. The Complainant has been involved in many prestigious international and national events and organizes various sports and cultural events annually. In 2022, the Complainant organized around 1,170 events in 80 different countries with approximately 680,000 participants. Amongst the various events that the Complainant organizes annually, it launched in 2013 the event Red Bull Sound Select, an artist development program, and music discovery platform to assist break emerging musicians.

The Complainant is the owner of various registered trademarks that consist of or include RED BULL in various jurisdictions throughout the world, including the following:

- the European Trademark no. 000052803 RED BULL registered on March 16, 2001, covering goods and services in classes 3, 5, 9, 12, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 29, 30, 32, 33, 34, 35, 37, 39, 41 and 42;
- the International trademark no. 641378 RED BULL registered as of February 24, 1995 covering goods and services in classes 3, 5, 12, 14, 16, 18, 20, 25, 26, 28, 29, 30, 32, 33, 34, 35, 39, 41 and 42.

The Complainant also owns and uses the domain name <redbull.com> from January 5, 1998 as its main website.

The disputed domain name originally was registered by the Complainant on November 19, 2012, for its event Red Bull Sound Select. After expiration, the disputed domain name was registered on January 10, 2021 by the Respondent. The disputed domain name redirects to "www.visionairlines.com" which in turn resolves to a betting/gambling 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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's RED BULL trademark, which is fully included in the disputed domain name. The addition of the generic/descriptive terms "sound" and "select" does not avoid the confusing similarity between the disputed domain name and Complainant's trademarks. The RED BULL trademark is clearly recognizable in the disputed domain name.

As regards the second element, the Complainant argues that it has not licensed or otherwise permitted the Respondent to use any of its RED BULL trademarks, any variations or combinations thereof, or to register or use any domain name incorporating any of those marks, any variations or combinations thereof. The disputed domain name, containing the Complainant's well-known trademark RED BULL, resolves to a commercial online gambling website (mostly connected to Football games) where the indication of the user's bank account is necessary to get registered and access to the betting/gambling services.

With respect to the third element, the Complainant argues that the Respondent has registered the disputed domain name which is confusingly similar to the Complainant's well-known trademark and the Respondent knew, or should have known, that its registration would be confusingly similar to the Complainant's trademark. This is further confirmed by the fact that the disputed domain name consists of the name of the Complainant's event "Red Bull Sound Select" organized in the past by the Complainant. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the products displayed there.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. In an informal communication after the receipt of the Complaint, the Respondent indicated he didn't know that the "domain has a patent", and asked for compensation to return the disputed domain name. The Complainant was willing to settle but at no cost. On September 7, 2023, the Respondent sent another informal communication saying he "purchased a domain for up to USD 2,000 and you say there is no fee and my side has to return the domain".

## **6. Discussion and Findings**

No substantive response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainants as per paragraph 15(a) of the Rules.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the 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.

### **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#), section 1.7").

Based on the available record, the Panel finds 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 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. While the addition of other terms here, "sound" and "select" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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.

There is no evidence in the record that the Respondent is currently using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to evidence with the Complaint, the Respondent is using the disputed domain name for an online gambling website where the indication of the user’s bank account is necessary to get registered and access to the betting/gambling services. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent’s part.

There is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Based on the available record, 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.

According to the unrebutted assertions of the Complainant, its RED BULL trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar with the Complainant’s trademark. The Respondent has not denied knowledge of the Complainant. Under these circumstances, the Respondent very likely registered the disputed domain name, after it had expired, having the Complainant’s trademark in mind. The Respondent provided no explanations for why he registered the disputed domain name.

According to evidence with the Complaint, the disputed domain name resolves to an online gambling website where the indication of the user’s bank account is necessary to get registered and access to the betting/gambling services. This shows that the Respondent is aiming to capitalize on the reputation of the RED BULL trademark by creating a likelihood of confusion with the Complainant’s mark in order to divert customers to its website.

Therefore, given the circumstances in the case the Panel considers that the Respondent must have had knowledge of the Complainant's rights in the RED BULL trademarks when he registered the disputed domain name and it has intentionally created likelihood confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

The record also shows that in the informal correspondence after the receipt of the Complaint, the Respondent seems to have asked for an amount in the range of USD 2,000, the amount for which he allegedly purchased the disputed domain name, for the transfer of the disputed domain name. This amount is likely in excess of the Respondent's out-of-pocket costs directly related to the registration of the disputed domain name. Hence, the record appears to show that, if the Respondent did not primarily obtain the disputed domain name for bad faith purposes as described under Policy, paragraph 4(b)(iv), then the Respondent primarily obtained the disputed domain name for the purpose of selling the disputed domain name to the Complainant or the Complainant's competitors for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name. The record offers no evidence to refute this finding.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainants' contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <redbullsoundselect.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: October 10, 2023