

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Monster Energy Case No. D2023-3489

1. The Parties

The Complainant is Monster Energy Company, United States of America, represented by Knobbe, Martens, Olson & Bear, LLP, United States of America.

The Respondent is Monster Energy, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <monsterenergy.marketing> (the “Disputed Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).¹

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2023. On August 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 17, 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 the Complainant on August 18, 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 August 23, 2023.

On August 18, 2023, the Center informed the parties in Dutch and English, that the language of the registration agreement for the Disputed Domain Name is Dutch. On August 23, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

¹ On September 28, 2023, Google LLC, confirmed that the new Registrar is Squarespace Domains II LLC, following an agreement with Google LLC to purchase all domain registrations from Google LLC. Further, both Registrars have confirmed their compliance with the UDRP and their intention to implement the decision.

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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any formal response. On September 20, 2023, the Center received an email from a third party stating that the Written Notice was received by a third party who has nothing to do with the registrant of the Disputed Domain Name. Accordingly, the Center notified Commencement of Panel Appointment Process on September 21, 2023.

The Center appointed Flip Jan Claude Petillion 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

The Complainant, Monster Energy Company, is an American company mainly active in the beverage business.

The Complainant is the owner of numerous registered trademarks, including the following:

- MONSTER ENERGY, European Union word Trade mark registered under No. 004823563 on January 10, 2007, in classes 5 and 32.

In addition to beverages, the Complainant uses the MONSTER ENERGY trademark in connection with clothing, beverageware, automotive products, sports and fitness equipment, and other products and services.

The Respondent registered the Disputed Domain Name on July 27, 2023. The Disputed Domain Name appears to direct to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical and confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. To the best of the Complainant's knowledge, the Respondent is not commonly known by the Disputed Domain Name. According to the Complainant, the Respondent has not received any license or permission to use the MONSTER ENERGY trademark in connection with registering a ".marketing" domain name. The Complainant claims that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant and the Complainant's well-known MONSTER ENERGY trademark when it registered the Disputed Domain Name. The Complainant also claims the Respondent's passive holding of the Disputed Domain Name constitutes domain name use in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Procedural Issue: Language of proceedings

Pursuant to the Rules, Paragraph 11, in the absence of an agreement between the Parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise.

According to information received from the concerned registrar, the language of the registration agreement for the Disputed Domain Name is Dutch. The Complaint has been submitted in English.

UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include:

- evidence showing that the respondent can understand the language of the complaint;
- potential unfairness or unwarranted delay in ordering the complainant to translate the complaint;
- other *indicia* tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

On UDRP panel appointment, both parties' arguments are provided to the UDRP panel for its determination as to the language of proceeding. This may include accepting the complaint as filed, and a response in the language of the registration agreement, thereby seeking to give both parties a fair opportunity to present their case (see section 4.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel observes that the Disputed Domain Name consists exclusively of English words ("monster", "energy" and "marketing").

The Complainant requests that English be the language of the proceedings for several reasons, including:

- the fact that the Disputed Domain Name consists exclusively of English words ("monster", "energy" and "marketing"); and
- the fact that the Complainant and its representatives are not fluent in Dutch, and continuing with the proceeding in Dutch would cause additional expense and undue delay while also raising the risk of mistranslation or misunderstanding of critical statements or communications.

The Panel observes that the Respondent was made aware of the present proceedings with a Dutch communication from the Center and did not reply. By accepting the terms and conditions of the registration agreement in Dutch and by the Center's communication, the Respondent was sufficiently informed about the content of these administrative proceedings. The fact that the Respondent did not reply to any of the communications sent by the Center indicates that the Respondent deliberately opted for not taking part in the proceedings and chose not to use its right to defend itself. In such circumstances, the Panel finds that it would be a disadvantage for the Complainant to be forced to translate the Complaint. As the Respondent had ample chance to defend itself but elected not to do so, the rights of the Respondent to defend itself and the right to equal treatment are guaranteed (see *INTS IT IS NOT THE SAME, GmbH (dba DESIGUAL) v. Two B Seller, Estelle Belouard*, WIPO Case No. [D2011-1978](#)).

For these reasons and given the circumstances of this case as further explained below, the Panel determines that the language of the proceedings is English.

6.2 Substantive elements of the Policy

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed he must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's MONSTER ENERGY trademark has been registered and used in various countries in connection to the Complainant's beverage business.

The Disputed Domain Name is identical to the Complainant's MONSTER ENERGY trademark. It is well established that the generic Top-Level Domain ("gTLD"), here ".marketing", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. In the Panel's view, the fact that the Respondent's name is identical to the second-level portion of the Disputed Domain Name does not show that the Respondent is commonly known by this name. On the contrary, the Respondent's name being identical to the Complainant's MONSTER ENERGY trademark rather suggests that the Respondent used false contact details to register the Disputed Domain Name. The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's MONSTER ENERGY trademark in its entirety without any addition. Moreover, in the Panel's view, the fact that the Disputed Domain Name has been registered under the ".marketing" gTLD may even increase confusion among Internet users by referring to the Complainant's marketing activities. Given the Complainant's extensive marketing efforts, it is likely that the average customer will associate the Disputed Domain Name to the Complainant's marketing campaigns. Therefore, the Panel finds that the Disputed Domain Name cannot constitute *bona fide* or even fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, the Respondent does not appear to make any use of the Disputed Domain Name. The passive holding or non-use of a domain name is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain name (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Name. As mentioned above, the Disputed Domain Name incorporates the Complainant's distinctive trademark in its entirety, and combines it with a gTLD which can be easily linked to the Complainant's activities. The Complainant's marks predate the registration of the Disputed Domain Name by more than 15 years, and previous UDRP panels already recognized the well-known character of the Complainant's mark (see e.g., *Monster Energy Company v. Szymon Nowak*, WIPO Case No. [D2022-3010](#) (October 19, 2022); *Monster Energy Company v. Michael Janzen, Mr. Sunshine Solar*, WIPO Case No. [D2023-1581](#) (May 6, 2023); *Monster Energy Company v. Christopher Martin*, WIPO Case No. [D2023-2561](#) (August 4, 2023) *Monster Energy Company v. David Czinczenheim*, WIPO Case No. [D2023-2285](#) (August 21, 2023). In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Panel observes that the Respondent is not presently using the Disputed Domain Name. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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 (see section 3.3 of [WIPO Overview 3.0](#)).

In the present case, the Panel is of the opinion that all above factors apply in this case:

- the Panel finds that the Complainant's MONSTER ENERGY trademark is distinctive and well-known;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- there are indications that the Respondent concealed its identity by using false contact details. As mentioned above, the Respondent's name is identical to the Complainant's trademark. Moreover, according to an email sent by a third party after the notification of the Complaint, the Respondent's address is a private address of a person who apparently has nothing to do with the registrant of the Disputed Domain Name; and
- given the identity with the Complainant's registered trademark and confusing similarity with the Complainant's company name, the Panel finds it difficult to conceive any plausible legitimate future use of the Disputed Domain Name by the Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <monsterenergy.marketing> be transferred to the Complainant.

/Flip Jan Claude Petillion
Flip Jan Claude Petillion
Sole Panelist
Date: October 10, 2023