

ADMINISTRATIVE PANEL DECISION

Woodbolt Distribution, LLC v. Ahmad Nassan, Ultramade Nutrition and Beverages (FZE)

Case No. D2023-4689

1. The Parties

The Complainant is Woodbolt Distribution, LLC, United States of America (“United States”), represented by Polsinelli PC Law firm, United States.

The Respondent is Ahmad Nassan, Ultramade Nutrition and Beverages (FZE), United Kingdom,¹ represented by Esnad Intellectual Property, United Arab Emirates (“UAE”).

2. The Domain Name and Registrar

The disputed domain name <c5energy.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2023. On November 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 13, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 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 amended Complaint on November 20, 2023. The Respondent sent two email communications to the Center on November 22, 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”).

¹ According to the Registrar’s verification, the Respondent is an individual named Ahmad Nassan with an address in the United Kingdom, however, according to the information and evidence submitted by the Respondent, it is a company, Ultramade Nutrition and Beverages (FZE), incorporated in the United Arab Emirates (“UAE”), represented by Ahmad Naasan.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. The Response was filed with the Center on December 16, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 10, 2024. 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 does business as “Nutrabolt”. It is a United States-based nutritional life sciences company engaged in the worldwide manufacture, marketing and distribution of dietary supplements, beverages, apparel and related products. One of the Complainant’s product lines is marketed under the brand C4.

The Complainant is the owner of numerous trademark registrations of the sign “C4” (the “C4 trademark”) around the world, including the following:

- the United States trademark C4 with registration No. 4632277, registered on November 4, 2014 for goods in International Class 5;
- the European Union trademark C4 with registration No. 017884004, registered on August 4, 2018 for goods in International Class 32;
- the Chinese trademark C4 with registration No. 20641269, registered on May 14, 2019 for goods in International Class 5;
- the Indian trademark C4 with registration No. 4208825, registered on June 17, 2019 for goods in International Classes 5 and 32;
- the UAE trademark C4 with registration No. 262728, registered on March 28, 2018 for goods in International Class 5; and
- the UAE trademark C4 with registration No. 312462, registered on September 29, 2019 for goods in International Class 32.

The Complainant is also the owner of the following trademark registrations of the sign “C4 ENERGY” (the “C4 ENERGY trademark”):

- the Chinese trademark C4 ENERGY with registration No. 31452324, registered on March 28, 2019 for goods in International Class 32; and
- the United States trademark C4 ENERGY with registration No. 6487156, registered on September 14, 2021 for goods in International Class 32, with a first use in commerce date of March 24, 2020.

The Complainant uses the domain name <c4energy.com> to redirect to its official website for its C4 line of products.

The Respondent is a manufacturer of soft drinks and food supplements, incorporated on August 8, 2022 and based in the UAE. It is the holder of registration certificates issued by the Dubai authorities in October and November 2023 in respect of several food supplements branded “C5”.

The Respondent has filed the following trademark applications for the sign “C5”:

- the UAE trademark application C5 with application No. 393924, filed on March 13, 2023 for goods in International Class 32;
- the European Union trademark application C5 with application No. 018847553, filed on March 13, 2023 for goods in International Class 32; and
- the United States trademark application C5 with application No. 97835636, filed on March 13, 2023 for goods in International Class 32.

The disputed domain name was registered on April 10, 2020. It resolves to a website that offers for sale supplements, energy beverages, and related products bearing the brand "C5".

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.

The Complainant states that the disputed domain name is confusingly similar to its C4 and C4 ENERGY trademarks, because it incorporates those trademarks by replacing the number "4" with the number "5". According to the Complainant, this difference does not diminish the confusing similarity of the disputed domain name with the C4 and C4 ENERGY trademarks.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it registered the disputed domain name to create a false and misleading association with the Complainant in an attempt to impersonate it and its <c4energy.com> domain name in a scheme to defraud. The Complainant alleges that the disputed domain name links to a fraudulent website offering pre-workout supplements, energy drinks, and related products under the C5 brand that are designed to look very similar to the Complainant's C4 products in an attempt to deceive Internet users into believing that these products originate from the Complainant. The Complainant notes that the products offered for sale on the website at the disputed domain name display the trademark registration symbol "®" next to the C5 brand and claim that it is a registered trademark in the United States and in Europe, although no such trademark is registered anywhere in the world.

The Complainant states that the Respondent is not commonly known by the disputed domain name and is not affiliated with the Complainant or licensed to use the C4 trademark or domain names incorporating it.

The Complainant maintains that by registering a domain name that is confusingly similar to the Complainant's well-known C4 trademark and its <c4energy.com> domain name and by selling products that are identical in appearance and function to the Complainant's C4 products, the Respondent is attempting to exploit the Complainant's rights, title, interest, and goodwill in the C4 trademark, and to profit from the confusion with the Complainant's domain name <c4energy.com>.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the composition of the disputed domain name and the products sold on the associated website show that the Respondent was aware of the Complainant at the time of the registration of the disputed domain name. The Complainant submits that the Respondent is falsely suggesting it is the trademark owner and that the website at the disputed domain name is an official website of the Complainant. According to the Complainant, the Respondent has acted and continues to act in bad faith with the intent to capitalize upon the property rights and diminish the value of the C4 trademark and the goodwill of the Complainant, for the unlawful purpose of attracting Internet users to the website at the disputed domain name by creating confusion as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name and of the products sold thereon.

The Complainant states that it sent several cease-and-desist letters to the Respondent prior to filing the Complaint, to which the Respondent failed to respond. The Complainant adds that it has filed multiple takedown requests with social media platforms that host accounts listed on the Respondent's website at the disputed domain name that use the C5 brand. According to the Complainant, the Respondent's failure to respond to the Complainant's letters or to the allegations in the Complainant's social media takedown requests indicates that the Respondent acted in bad faith.

B. Respondent

The Respondent submits that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent submits that its company is located in the territory of the UAE and that its owner and director are foreign nationals. The Respondent adds that its activities include the manufacture of soft drinks, non-alcoholic malt beverages, and nutritional supplements. The Respondent maintains that it is a legally licensed company that does not copy or imitate any other trademarks and products, as it has its own original identity and unique product formulations and flavors. The Respondent states that it obtained the ownership of the disputed domain name in August 2020 and adds that it also owns the domain name <c5energy.ae>.

The Respondent denies that the disputed domain name is confusingly similar to the Complainant's C4 trademark. According to the Respondent, the market is open and there is fair competition between the Parties; there are many similar products on the market and it is up to the consumers to choose what is suitable for their needs. The Respondent adds that the Parties' products are targeted at consumers with expertise and knowledge of nutritional substances, and are chosen after thorough research and careful reading.

According to the Respondent, there is no conflict between the domain names of the Complainant and of the Respondent, and each of them carries its own identity independently. The Respondent denies that the Parties are in competition with each other because their companies are separated by hundreds of millions of miles [sic], operate on different continents and have different origins, and there are no commercial or industrial ties between them.

The Respondent adds that the disputed domain name was acquired with the purpose of developing its products, brands, and related products to become a competitive global brand, through its sponsorship of sporting activities and events related to the Emirates Bodybuilding and Fitness Federation as a strategic partner and sponsor of sporting events related to the game within the UAE. According to the Respondent, its brand C5 has achieved wide local distribution through the presence of the product in cooperative societies and pharmacies in the UAE, in Carrefour commercial centers, and on the e-commerce platforms Amazon and Noon.

The Respondent claims that it is the owner of the trademark C5 registered in the UAE under registration number 393924, that the same trademark is registered in certain countries in Europe and that it has been applied for registration in Iraq, Saudi Arabia, Bahrain, Syria, Kuwait, the Russian Federation, Egypt, and others. The Respondent maintains that in many countries it has obtained an acceptance decision to complete the registration procedures in accordance with the law.

The Respondent submits that its C5 Extreme and C5 Night products are registered and licensed by the Dubai Municipality, Health and Safety Department, Consumer Goods Safety Section and are available in local markets and online platforms, with distributors in various countries. It maintains that the C5 trademark is present at all sporting events in the UAE and Europe, and sponsors major international dietary supplement exhibitions and events such as the Dubai Muscle Show and Dubai Active.

The Respondent requests a finding that the Complainant has engaged in reverse domain name hijacking.

6. Discussion and Findings

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.

The Complainant has shown rights in respect of the C4 and C4 ENERGY trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel also finds that the C4 and C4 ENERGY trademarks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the C4 and C4 ENERGY trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The replacement of the digit "4" by the digit "5" in the disputed domain name is not sufficient to preclude a finding of confusing similarity with the C4 and C4 ENERGY trademarks.

The Panel therefore finds that 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Panel understands the Respondent's contentions as a claim that it has registered and is using the disputed domain name in connection with a bona fide offering of goods.

The disputed domain name is confusingly similar to the Complainant's C4 and C4 ENERGY trademarks, which the Complainant registered and began using worldwide for its C4 products years before the disputed domain name was registered in 2020. The Respondent does not deny that it had knowledge of the Complainant and its C4 products, and this knowledge is confirmed by the evidence submitted by the Respondent, i.e., the photographs of the Parties' products offered for sale side by side in a supermarket and the online article mentioning both Parties as sponsors of the same event in the UAE. The registration certificates submitted by the Respondent also show that its company was registered in 2022 and its C5 products were registered in 2023, which the Panel understands to mean that their production could not have started earlier. The Respondent's C5 brand is confusingly similar to the Complainant's C4 trademark, and the packaging of the Respondent's C5 products is similar to the packaging of the Complainant's C4 products. Contrary to the Respondent's claim, the document submitted by it shows that its C5 trademark is actually

only an application filed in March 2023 that has not been registered yet. The license granted by the local health authority do not appear to involve a trademark assessment for prior marks or businesses, and is therefore of no assistance to the Respondent here. All of this shows that the Respondent has registered and begun using the disputed domain name to offer competing goods under a brand and with a packaging that are confusingly similar to the Complainant's C4 trademark and products, and that it has done so with knowledge of the Complainant trademark and products. This supports a conclusion that the Respondent has targeted the Complainant with the registration and use of the disputed domain name in an attempt to profit from the Complainant's goodwill, which cannot support a finding that the Respondent has carried out a bona fide offering of goods and that it has rights or legitimate interests in the disputed domain name. The Panel is mindful that there may be an argument that this case presents issues of possible trademark infringement and unfair trade practices and would be better addressed by a competent court or trademark office; given however the finding as to bad faith below, the Panel sees this case as one falling within the text paragraphs 4(b)(iii) and (iv) of the Policy.

Therefore, 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.

Here, the Respondent has a registered a domain name that is confusingly similar to the Complainant's C4 and C4 ENERGY trademarks and to the Complainant's <c4energy.com> domain name, and is using it to offer products bearing a brand that is also confusingly similar to the Complainant's C4 and C4 ENERGY trademarks, which products compete with the Complainant's C4 products. The disputed domain name was registered and the Respondent began offering its C5 products years after the Complainant registered its C4 and C4 ENERGY trademarks and began using them for its C4 products, and the Respondent does not deny its knowledge of the Complainant and of its C4 products. All this supports a finding that the Respondent has registered and is using the disputed domain name in an attempt to disrupt the business of a competitor, and that it intentionally attempts to attract, for commercial gain, Internet users to the disputed domain name and to the associated website by creating a likelihood of confusion with the Complainant's C4 and C4 ENERGY trademarks as to the source or affiliation of the Respondent's website and of the products offered thereon. This supports a finding of bad faith registration and use of the disputed domain name under Paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy.

The Panel's finding above renders moot the Respondent's claim of reverse domain name hijacking.

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 <c5energy.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: January 22, 2024