

## **ADMINISTRATIVE PANEL DECISION**

### **Monster Energy Company v. Artic Wolf**

### **Case No. D2023-5007**

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

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

The Respondent is Artic Wolf, United States.

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

The disputed domain name <monster-energy.vip> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2023. On December 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 1, 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 December 8, 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 December 9, 2023.

The Center verified that the Complaint and 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 December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on January 18, 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, a corporation organized under the laws of the State of Delaware, is in the business of designing, creating, developing, marketing, and selling beverages under its MONSTER ENERGY trademark. In addition to beverages, the Complainant uses its MONSTER ENERGY mark in connection with clothing, beverageware, automotive products, sports and fitness equipment, among other products and services.

The Complainant introduced its line of beverages in the United States as early as 2002 and subsequently began selling its line of beverages internationally in 2003. By virtue of the extensive sales and marketing conducted by the Complainant, its products have become recognized by consumers in the United States and worldwide as designating the Complainant as the source of its MONSTER ENERGY products. As of 2023, the Complainant's retail sales exceeded 6.7 billion cans totaling USD 14 billion.

The Complainant owns the following registered trademarks with the United States Patent and Trademark Office ("USPTO"), including but not limited to: MONSTER ENERGY, United States Trademark Registration No. 3,057,061, registered on February 7, 2006, in international class 32; MONSTER ENERGY, United States Trademark Registration No. 3,044,315, registered on January 17, 2006, in international class 5; and MONSTER ENERGY, United States Trademark Registration No. 4,036,681 registered on October 11, 2011, in international class 32. In addition, the Complainant owns hundreds of trademark registrations for MONSTER ENERGY and MONSTER-comprising trademarks in numerous jurisdictions worldwide.

The foregoing referenced trademarks will hereinafter collectively be referred to as the "MONSTER ENERGY Mark".

The Complainant owns the domain name <monsterenergy.com>, which resolves to its official website at "www.monsterenergy.com", which it launched on August 19, 2003. The Complainant's website prominently displays the MONSTER ENERGY Mark and receives thousands of unique visitors each month.

The Disputed Domain Name was registered on June 26, 2023, significantly after the Complainant registered the MONSTER ENERGY Mark in the United States and jurisdictions worldwide. The Respondent initially used the Disputed Domain Name to resolve to a website promoting and selling cryptocurrency on an Ethereum blockchain, as shown in screenshots submitted by the Complainant as an annex to the Complaint.<sup>1</sup> The Respondent used the Complainant's MONSTER ENERGY Mark on the website along with images of the Complainant's MONSTER ENERGY beverages, as well as messages referencing the financial benefits of the Respondent's Ethereum blockchain network, among other things. The website had a clickable button labeled "Buy Monster" at the bottom of the page and when users clicked on the button to purportedly purchase the "Monster energy" cryptocurrency, they were required to input personal and confidential information in order to do so.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the Disputed Domain Name. Notably, the Complainant contends that:

---

<sup>1</sup> The Disputed Domain Name ceased to resolve to the Respondent's above-referenced website and instead currently resolves to an inactive error ("404") landing page.

- the Disputed Domain Name is confusingly similar to the Complainant's MONSTER ENERGY Mark because the Disputed Domain Name contains the MONSTER ENERGY Mark in its entirety joined by a hyphen and followed by the generic Top-Level Domain ("gTLD") ".vip", and thus does not prevent a finding of confusing similarity;

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Complainant has not authorized the Respondent to register a domain name containing the MONSTER ENERGY Mark, the Respondent was not making a *bona fide* offering of goods or services, and the Respondent has never been commonly known by the MONSTER ENERGY Mark or any similar name;

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Disputed Domain Name initially resolved to a website promoting cryptocurrency through a blockchain network, and thus, the Respondent perpetuated a phishing scheme to acquire personal and confidential information from users.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions

## **6. Discussion and Findings**

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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 was registered and is being used in bad faith.

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

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the MONSTER ENERGY Mark.

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

It is uncontroverted that the Complainant has established rights in the MONSTER ENERGY Mark based on its years of use as well as its vast number of registered trademarks for the MONSTER ENERGY Mark before the USPTO and jurisdictions worldwide. The consensus view is that registration of a mark is *prima facie* evidence of validity. The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the MONSTER ENERGY Mark.

In addition, where the Complainant's MONSTER ENERGY Mark is recognizable in the Disputed Domain Name, as here, this does not prevent a finding of confusing similarity or identity under the first element. As

stated in section 1.8 of [WIPO Overview 3.0](#), “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms [...] would not prevent a finding of confusing similarity under the first element”.

The Disputed Domain Name consists of the MONSTER ENERGY Mark in its entirety joined by a hyphen, and then followed by the gTLD “.vip”. It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy. Moreover, although the Disputed Domain Name contains a hyphen between the terms “monster” and “energy”, this is irrelevant for purposes of the Policy because the presence or absence of punctuation marks such as hyphens cannot on their own avoid a finding of confusing similarity. See *Six Continents Hotels, Inc. v. Helen Siew*, WIPO Case No. [D2004-0656](#) (citing *Six Continents Hotels, Inc. v. Georgetown, Inc.*, WIPO Case No. [D2003-0214](#) (hyphens do not “serve to dispel Internet user confusion here”)).

Finally, the addition of a gTLD such as “.vip” in a domain name is a technical requirement. As such, it is well-established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s MONSTER ENERGY Mark.

Based on the available record, the Panel 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 that 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.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its MONSTER ENERGY Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

Furthermore, the use of the Disputed Domain Name to initially resolve to a website bearing the MONSTER ENERGY Mark with images of the Complainant’s products to promote cryptocurrency sales to Internet users arriving at the website, does not confer rights or legitimate interests on the Respondent. To purchase cryptocurrency on the website, users must click on a tab on the website where they are required to provide personal and confidential information, demonstrating bad faith use as a scam. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing

scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”).

The Panel also concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead and defraud the Complainant’s customers. Moreover, such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy.

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

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, as was present here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel thus finds that the Respondent’s registration and use of the Disputed Domain Name constitutes bad faith registration and use under the Policy due to the Respondent’s use of a website purportedly offering cryptocurrency services to unwitting customers who were searching for the Complainant’s services. Had Internet users wished to purchase cryptocurrency on the Respondent’s website, they were required to click on a button whereby they were required to provide financial and confidential information, emblematic of bad faith based on a phishing scam. Although the Disputed Domain Name currently resolves to an inactive webpage, the Respondent previously used the Disputed Domain Name to deceive visitors into believing that they were visiting a webpage affiliated with, sponsored by, approved by, or otherwise endorsed by the Complainant. The Respondent’s use of the Disputed Domain Name was also highly likely to confuse Internet users into incorrectly believing that the Respondent was somehow authorized by or affiliated with the Complainant, another instance of bad faith registration and use.

Moreover, the Panel finds that the Respondent had actual knowledge of the Complainant’s MONSTER ENERGY Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent’s bad faith. Based on the Complainant’s widespread use of the MONSTER ENERGY Mark and the Respondent’s almost identical Disputed Domain Name to the Complainant’s Mark and domain name, it strains credulity to believe that the Respondent had not known of the Complainant or its MONSTER ENERGY Mark when registering the Disputed Domain Name since the Respondent used the resolving website of the Disputed Domain Name to offer cryptocurrency services labeled “Monster energy”. The Respondent’s awareness of the Complainant and its MONSTER ENERGY Mark additionally suggests that the Respondent’s decision to register the Disputed Domain Name intended to cause confusion with the Complainant’s MONSTER ENERGY Mark, to disrupt the Complainant’s business, and take advantage of the goodwill associated with the Complainant’s MONSTER ENERGY Mark.

Finally, panels have found that the non-use of a domain name resolving to an error landing page with no substantive content would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the current non-use of the Disputed Domain Name also does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that the fame and reputation of the Complainant’s MONSTER ENERGY Mark, the

composition of the Disputed Domain Name that is virtually identical to the MONSTER ENERGY Mark, the Respondent's failure to submit a response or to provide any evidence of good faith use, and finds that in the circumstances of this case the current passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that 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 <monster-energy.vip> be transferred to the Complainant.

*/Lynda M. Braun/*

**Lynda M. Braun**

Sole Panelist

Date: January 25, 2024