

## **ADMINISTRATIVE PANEL DECISION**

### **Monster Energy Company v. Justin Pires Case No. D2023-5255**

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

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

Respondent is Justin Pires, United States.

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

The disputed domain name <unleashthebeast.solutions> (hereinafter “Disputed Domain Name”) 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 December 19, 2023. On December 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 19, 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 Complainant on December 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 2, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on February 9, 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**

In 2002, Complainant began use of the trademark UNLEASH THE BEAST! (hereinafter sometimes the “Mark”) in connection with the sale and promotion of its beverage products, including its MONSTER ENERGY drinks, and, over time, related apparel, merchandise and live events.

Sales, which have increased every year since the brand was launched, now exceed USD 105 billion in estimated total retail revenues internationally. In 2023, Complainant sold at retail more than 6.7 billion cans worldwide with estimated retail sales exceeding USD 14 billion.

Complainant’s <monsterenergy.com> domain name, launched on August 19, 2003, prominently displays the UNLEASH THE BEAST! mark and receives thousands of unique visitors each month. Between June 1, 2020, and July 29, 2022, Complainant’s website had over 28 million visits with over 22 million new users and over 62 million page views.

Complainant also displays the Mark on many social media sites. In 2020, for example, Complainant’s various social media channels had over 236 million fan engagements. These same channels reached over 11 billion impressions on online users.

Complainant owns trademark registrations for UNLEASH THE BEAST! in plain text (standard character), including United States Registration Number 5,927,420 (registered on December 3, 2019) and United States Registration Number 5,820,901 (registered on July 30, 2019).

The Disputed Domain Name, which was registered on August 15, 2023, does not resolve to an active website. When accessing the Disputed Domain Name, the browser reports “[t]his site can’t be reached.”

#### **5. Parties’ Contentions**

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, Complainant contends that, given its long use of the Mark and significant sales, the Mark is so well-known that Respondent was probably well aware of Complainant’s trademark rights when it registered the Disputed Domain Name. Complainant notes that several UDRP decisions have ruled that the Mark is well-known. For example, in *Monster Energy Company v. Kenna James*, WIPO Case No. [D2022-4472](#), the Panel observed that the “fanciful UNLEASH THE BEAST! mark has been used for more than 20 years globally” and that “[t]he recognized success of the Complainant’s UNLEASH THE BEAST! Branded products show that the mark is well known.”

##### **B. Respondent**

Respondent did not submit a response to the Complaint.

## **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 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.

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 Mark is reproduced almost entirely (only the "!" punctuation is missing) within the Disputed Domain Name. The Mark is recognizable 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.

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 Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on 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 Respondent. As such, where a complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

### **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.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name 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 Complainant's mark, (ii) the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) 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 Mark is both distinctive with respect beverage products and well-known; and that Respondent has not offered any benign explanation for its registration of the Disputed Domain Name. Accordingly, the Panel finds that in the

circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that Complainant has established the third 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 <unleashthebeast.solutions> be transferred to Complainant.

*/Lawrence K. Nodine/*

**Lawrence K. Nodine**

Sole Panelist

Date: February 23, 2024