

ADMINISTRATIVE PANEL DECISION

Red Bull GmbH v. Privacy Service Provided by Withheld for Privacy ehf / Red Bull

Case No. DIO2022-0030

1. The Parties

The Complainant is Red Bull GmbH, Austria, represented by TALIENS Partnerschaft von Rechtsanwälten mbB, Germany.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Red Bull, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 14, 2022. On July 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 27, 2022, 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 1, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 26, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on September 7, 2022. 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 is a producer of energy and other non-alcoholic drinks. The most well-known of the Complainant's products is its Red Bull Energy Drink, which was first sold in Austria in 1987. Approximately 7.6 billion units of the Complainant's products are now sold annually in 173 countries. In 2020, the Complainant spent EUR 1.77 billion marketing its products globally. The Complainant has recently offered for sale, via a third party website platform at "sweet.io", a range of non-fungible tokens ("NFTs") relating to its activities in the sponsorship of motorsport under the brand of Red Bull Racing.

The Complainant has registered trade marks in many jurisdictions for RED BULL, as well as for its distinctive and widely-used double bull device. Its RED BULL marks include, by way of example only, International Trade Mark, registration number 641378, registered on February 24, 1995, in multiple classes.

The disputed domain name was registered on February 13, 2022. It resolves to a webpage which features, top left, the word CRYPTLIGHT, positioned next to a link to a blog. At the top right of the webpage is a "Buy Now" button. Centrally positioned is the greeting "Hello world! Welcome to WordPress. This is your first post. Edit or delete it, then start writing!". Lower down the page is an invitation to "Invest with Cryptocurrencies Light tokens". Another paragraph beneath that is headed "Building Cryptocurrencies Out of India". Each of these headings is followed by the same paragraph, namely; "I joined Coinbase about two months ago to establish and lead a new tech hub for Coinbase in India. In this blog post, I wanted to share a bit about our plans and ambitions in India and how we are thinking about this hub in general". Clicking on the "Blog" link produces a further webpage containing the words "Don't miss out, Stay updated" which also features a small representation of the Complainant's double bull device.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to a trade mark or service mark in which it has rights. The disputed domain name contains the entirety of its RED BULL mark. The addition of the term "token" does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods and services. Nor has the Complainant licensed or otherwise permitted the Respondent to use any of its trade marks. To the best of the Complainant's knowledge, the Respondent is not commonly known by the disputed domain name, nor is the Respondent making a legitimate noncommercial or fair use of it. The use of the Complainant's double bull device falsely suggests an affiliation with the Complainant.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant says that it can reasonably be inferred that the Respondent knew or should have known that the disputed domain name was confusingly similar to the Complainant's mark. Registration of a domain name with an awareness of a complainant's mark and in the absence of rights or legitimate interests amounts to registration in bad faith, not least when there is no credible explanation for the Respondent's choice of the disputed domain name. By using the disputed domain name in order to resolve to a webpage which contains a copy of the Complainant's double bull device, the Respondent has intentionally attempted

to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided details of a number of the registered trade marks it owns for RED BULL, including the registration in respect of which full details have been provided above, which thereby establish its rights in this mark.

As a technical requirement of registration, the Top-Level Domain, that is ".io" in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the Complainant's RED BULL mark, in full and without alteration, followed by the word "token". The addition of this term does not prevent the disputed domain name from being confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")¹, if a trade mark is recognizable within a domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The Complainant's RED BULL mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

¹ The Panel follows prior decisions under the ioDRP and, given the similarities between the ioDRP and the Uniform Domain Name Resolution Policy ("UDRP"), finds it appropriate to refer to UDRP jurisprudence, including reference to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The form and content of the Respondent's website suggests that it is a sham, most likely created by the Respondent with the intention of scamming Internet users searching for the Complainant. There seems to be no relation between the opening section of the website inviting Internet users to start creating their first blog post and the sections which relate to the Respondent's apparent interest in cryptocurrencies and the promotion of a CryptLight Card. Moreover, some of the content appears repeatedly under different paragraph headings. A sham website will not serve to provide a respondent with rights or a legitimate interest in a domain name; see *Wellington Management Company LLP v. Steve Becker*, "Wellington-Management", WIPO Case No. [D2020-0579](#).

But, even in the unlikely event that the Respondent is genuinely soliciting interest in cryptocurrencies, its use of the Complainant's double bull device, establishes that it has registered the disputed domain name because it is aware of the Complainant's repute in its RED BULL mark and that Internet users will be apt to visit any website to which the disputed domain name resolves under the misapprehension that it will be operated by, or with the authorization of, the Complainant. Such use does not comprise use in connection with a *bona fide* offering of goods and services.

So far as the second circumstance is concerned, the Panel notes that the name of underlying registrant of the disputed domain name, as disclosed by the Registrar, is "Red Bull". However, this is insufficient to establish that the Respondent is actually called "Red Bull" not least when the Respondent has been using the Complainant's double bull device, which suggests that its claimed name is part of its broader plan to mislead Internet users. The type of evidence which a respondent seeking to establish that it is commonly known by a domain name would be required to adduce is set out at section 2.3 of the [WIPO Overview 3.0](#) and, as the Respondent has not replied to the Complaint, is notably absent in this case. Moreover, the form and content of the Respondent's website, as described above, tends to affirm the Respondent's cybersquatting intent.

The third circumstance is also inapplicable; the use which the Respondent has made of the disputed domain name is commercial in character. Furthermore, the nature of the disputed domain name carries a risk of implied affiliation with the Complainant which prevents its use from being considered fair; see, for example, *Columbia Insurance Company v. Name Redacted*, WIPO Case No. [D2022-0528](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy this burden. The Panel accordingly finds that the Respondent has no rights or interests with respect to the disputed domain name.

C. Registered or Used in Bad Faith

The composition of the disputed domain name is closely connected with the Complainant in that, in addition to containing the Complainant's RED BULL trade mark, it includes the term "token", which at least some Internet users are likely to associate with the NFT's which the Complainant has now launched. This points to an awareness by the Respondent of the Complainant and its activities as at the date of registration of the disputed domain name as well as an intention to take unfair advantage of the Complainant's repute. As the panel found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), "the registration of a domain name with the knowledge of the Complainant's trademark registration amounts to bad faith". Additionally, the Panel notes that the Respondent also appears to have provided a false contact address to the Registrar, which comprises further evidence of bad faith registration. The Panel therefore finds that the disputed domain name was registered in bad faith.

The only known use which the Respondent has made of the disputed domain name has been in order to redirect Internet users to its website. A (likely sham) website of the type created by the Respondent is, in itself, a strong indicator of bad faith use; see *Verizon Trademark Services LLC v. Mohd Daoud*, WIPO Case No. [D2016-1380](#). Moreover, as discussed above, such users are apt to assume from the fact that the disputed domain name includes the Complainant's well-known mark, that any website to which it resolves

will be operated by or with the consent of the Complainant. As explained at section 3.1.1 of the [WIPO Overview 3.0](#); “If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent”.

The Respondent’s use of the disputed domain name therefore falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy sets in that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website. Moreover, there is no conceivable good faith use which the Respondent could make of the disputed domain name, nor has the Respondent made any attempt to justify its conduct or to rebut the Complainant’s assertions.

The Panel accordingly finds that the disputed domain name is also being used in bad faith.

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 <redbulltoken.io> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: September 21, 2022