

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. David Czinczenheim Case No. D2023-2285

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 David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <monster-energy.com> is registered with Active Market Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 25, 2023. On May 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 27, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 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 June 2, 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 the Respondent of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. On June 5, 2023, the Respondent (initial Registrant of the disputed domain name) requested the automatic 4-day extension to file a Response pursuant to Rule 5(b). On June 6, 2023, the Center granted an extension of the due date for the Response to June 29, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent of the Commencement of Panel Appointment Process on June 30, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on July 7, 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.

On July 11, 2023, after appointment of the Administrative Panel, the Center ascertained that a cyberflight had occurred.

The Center communicated this to the two relevant registrars, Slam Dunk Domains LLC and Active Market Domains LLC, but despite this apparent breach of its ICANN obligations the Registrar did not restore the initial registration details for the disputed domain name.

Upon the Center's request of July 12, 2023, the Registrar confirmed that the disputed domain name had now been locked and provided information on the new named registrant.

Pursuant to Procedural Order No. 1 issued by the Panel on July 18, 2023, the Center informed the parties that a cyberflight had occurred and delivered a copy of the Complaint, the amended Complaint, and Procedural Order No. 1 to the currently named registrant of the disputed domain name, asking that any reply be submitted by August 13, 2023. No response was received, and the Panel therefore now proceeds to a decision.

4. Factual Background

The Complainant is in the business of designing, creating, developing, marketing, and selling beverages. It is the owner of the trademark rights in the well-known and highly successful MONSTER ENERGY brand, which it has used in relation to a range of energy drinks since 2002 in the United States, and since 2003 internationally. Since then, the Complainant's MONSTER ENERGY line of beverages has been extremely successful, with sales increasing every year since the brand's launch, and worldwide retail sales now exceeding 6 billion cans per year with estimated retail sales exceeding USD13 billion per year. In the United States, the Complainant's MONSTER ENERGY branded drinks are sold in over 417,000 retail stores and outlets; they are also sold in many other markets around the world. Since launch in 2002, the Complainant has sold more than 42 billion cans of MONSTER ENERGY branded drinks worldwide, and now sells approximately 6 billion cans per year worldwide. Sales have generated over USD92 billion in estimated total retail revenues internationally.

The Complainant's MONSTER ENERGY brand is the best-selling energy drink brand in the U.S. by unit volume and dollar value, and continues to be the fastest-growing major brand of energy drinks in the US and worldwide. Worldwide adjusted gross sales for all brands for the year ended December 31, 2021 increased to USD6.47 billion from USD5.37 billion in 2020, from USD4.87 billion in 2019, from USD4.43 billion in 2018, from USD3.86 billion in 2017, from USD3.49 billion in 2016, from USD3.11 billion in 2015, from USD2.83 billion in 2014, from USD2.59 billion in 2013, from USD2.37 billion in 2012, and from USD1.95 billion in 2011. MONSTER ENERGY drinks have represented 90.5%, 90.5%, 92.5%, 93.9% and 93.2% of the Complainant's consolidated net sales for the years ended 31 December 2017, 2016, 2015, 2014, and 2013, respectively.

By unit volume and dollar value, the Complainant's MONSTER ENERGY branded drinks are the best-selling energy drinks in the United States and the second best-selling worldwide. For the five-week period ending January 1, 2022, the Complainant held a 31.9% share of the measured Total Non-Alc (TNA) energy drink market by dollar value in the United States. For the four-week period ending November 27, 2021, the Complainant held a 31.6% share of the measured Total Non-Alc (TNA) energy drink market by dollar value in the United States. In the four-week period ending February 22, 2020, the Complainant held a 32.7% share of the measured Total Non-Alcoholic (TNA) energy drink market by dollar value in the United States, according to Nielsen.

The MONSTER ENERGY mark is the subject of substantial international marketing and promotion. The

Complainant has widely advertised, marketed, and promoted the MONSTER ENERGY brand through point of sale and promotional materials, promotional apparel, on social media, in magazines, on websites, in publications, the through the sponsorship of high-profile events including in the music and sporting fields.

The Complainant owns the domain name “www.monsterenergy.com”, at which it launched its website on August 19, 2003. That website prominently displays the MONSTER ENERGY mark and receives thousands of unique visitors each month. Between June 1, 2020, and July 29, 2022, the Complainant’s MONSTER ENERGY website had over 28 million visits with over 22 million new users and over 62 million page views.

The Complainant owns registered trademark rights in MONSTER ENERGY in countries around the world, pre-dating the Respondent’s registration of the disputed domain name by many years. These include, among many others:

- United States Trademark Registration No. 3,057,061 for MONSTER ENERGY in Class 32, filed on April 18, 2002 and registered on February 7, 2006;
- United States Trademark Registration No. 3,044,315 for MONSTER ENERGY in Class 5, filed on May 23, 2003 and registered on January 17, 2006; and
- United States Trademark Registration No. 4,036,681 for MONSTER ENERGY in Class 32, filed on September 11, 2007 and registered on October 11, 2011.

The Respondent registered the disputed domain name on March 16, 2023. It links to a landing page displaying the message “The domain name monster-energy.com is for sale | Dan.com” and “monster-energy.com is for sale”, as well as generic content relating to pricing for domain name sale and “lease to own” options.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or similar to its MONSTER ENERGY trademarks. The disputed domain name incorporates the Complainant’s MONSTER ENERGY mark in its entirety and is followed by the Top-Level Domain suffix “.com.” It differs only in the insertion of a hyphen between the words MONSTER and ENERGY, which the Complainant submits is a minimal alteration which does not change the meaning of the phrase or its overall impression.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized, licensed, or permitted the Respondent to use the MONSTER ENERGY mark in connection with the disputed domain name or otherwise, and there is no evidence that the Respondent has been or was commonly known by the disputed domain name. The Respondent is not and has never been an agent of the Complainant, nor is there any contractual relationship between them. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Complainant submits that the Respondent has registered and use the disputed domain name in bad faith. The Complainant’s MONSTER ENERGY mark had become well-known in the United States and internationally long before the registration of the disputed domain name. Given the Complainant’s extensive reputation and its numerous trademark registrations for MONSTER ENERGY, the Complainant argues that it is not possible to conceive of a plausible situation in which the Respondent would not have been aware of the Complainant and its MONSTER ENERGY brand (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also *Monster Energy Company v. Cai Manyi Manyicai*, WIPO Case No. [D2016-0301](#), transferring <monsterenergy.ren> and <monsterenergy.xyz> to the Complainant and finding that “[t]he MONSTER ENERGY trade mark is well known in the USA and

internationally”). The Complainant also submits that the Respondent’s use of the disputed domain name in connection with a landing page offering the domain name for sale constitutes use in bad faith under the passive holding doctrine (see *eg Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Teledesic LLC v. McDougal Design*, WIPO Case No. [D2000-0620](#); *Banco do Brasil S.A. v. Sync Technology*, WIPO Case No. [D2000-0727](#)). The Complainant also argues that the Registrant was aware of the Complainant’s rights in its MONSTER ENERGY mark when it registered the disputed domain name, and that it registered and is holding the disputed domain name primarily for the purpose of disrupting the Complainant’s business and/or for the purpose of intentionally attempting to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

B. Respondent

The Respondent did not reply to the Complainant’s contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent’s default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant owns registered trademark rights in MONSTER ENERGY.

The relevant comparison is between the Complainant’s marks and the second-level portion of the domain name (“monster-energy”). The generic Top-Level Domain (“gTLD”) suffix “.com” may be disregarded for this purpose ([WIPO Overview 3.0](#), section 1.11). The disputed domain name contains the Complainant’s trademark MONSTER ENERGY in its entirety, only adding a hyphen to denote the space between the two words.

The Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The burden of proving absence of rights or legitimate interests in a domain name falls on complainants, but panels have long recognized that the information needed to prove such rights or legitimate interests is normally in the possession of respondents.

In order to avoid requiring complainants to prove a negative, which will often be impossible, UDRP panels have typically accepted that once a complainant has established a *prima facie* case that a respondent lacks

rights or legitimate interests, the respondent carries the burden of proving that it does indeed have such rights or interests (see, *inter alia*, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)). In the present case, the Complainant has put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. There is nothing on the record in this case to indicate that the Respondent might have any rights or legitimate interests in it, nor has the Respondent attempted to make out a case that it has. The Complainant has not authorized the Respondent to use the disputed domain name, nor is there any evidence that the Respondent has ever been commonly known by it. The Respondent is not making any commercial or noncommercial use of the disputed domain name, which links to a landing page stating that the disputed domain name is for sale.

Taking all of the above into account, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name is identical to the Complainant's registered trademark MONSTER ENERGY, which had become well-known worldwide as a brand name for the Complainant's energy drinks long before the Respondent registered the disputed domain name. The Respondent is not linked to the Complainant in any way, and given the high profile, commercial success and substantial marketing around the Complainant's MONSTER ENERGY brand, it is difficult to conceive of any circumstances in which the Respondent could plausibly argue that it was not aware of the Complainant's mark when it registered the disputed domain name. The Respondent has not sought to deny this, and has not put forward any good faith explanation for its conduct in registering the disputed domain name. The Panel infers from this that there is none. The Panel finds that the Respondent was targeting the Complainant in registering the disputed domain name, and that it registered it in bad faith.

In using the disputed domain name to display a landing page offering the domain name for sale, the Respondent has also been using the domain name in order to advertise its "for sale" status. Given the bad faith surrounding the registration of this domain name, and the implausibility that it could be put to a non-misleading use by anyone other than the Complainant, the Panel finds that this use was in bad faith, also.

Given that the Respondent is making an active use of the disputed domain name, there is no need to apply the passive holding doctrine to this case. However, even if use to display a web page offering a domain name for sale were to constitute only passive holding, the Panel would find that the circumstances of this case would support a finding of bad faith use under the passive holding doctrine, taking into account the Complainant's strong reputation in its MONSTER ENERGY trademark, the lack of any evidence from the Respondent of any actual or contemplated good faith use of the domain name, and the fact that the original owner of it engaged in cyberflight upon receipt of notification of this dispute (see *e.g. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The facts also indicate that by registering the disputed domain name, the Registrant 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 the Respondent's website, with the apparent aim of selling the disputed domain name to the Complainant or a competitor of the Complainant for a price exceeding its out-of-pocket costs relating directly to the domain name. These circumstances also allow the Panel to infer both bad faith registration and use under paragraphs 4(b)(i) and (iv) of the Policy.

Taking all of the above into account, the Panel concludes that the disputed domain name was registered and has been 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, <monster-energy.com> be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: August 21, 2023