

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Artsiom Dryneuski
Case No. D2023-3251

1. The Parties

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

The Respondent is Artsiom Dryneuski, Belarus.

2. The Domain Name and Registrar

The disputed domain name <monsterenergy.uno> is registered with Registrar of Domain Names REG.RU LLC (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on July 28, 2023. On July 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On August 4, 2023, the Center informed the Parties in Russian and English that the language of the registration agreement for the disputed domain name was Russian. On August 8, 2023, the Complainant filed an amended Complaint in English and requested the language of the proceeding to be English. The Respondent did not comment on the language of the proceeding.

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 in both Russian and English, and the proceedings commenced on August 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 21, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on October 19, 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.

4. Factual Background

The Complainant is the manufacturer of the MONSTER ENERGY beverages, which it produces since 2002. The worldwide annual retail sales of MONSTER ENERGY beverages currently exceed 6.7 billion cans with estimated retail sales figures exceeding USD 14 billion. The Complainant adopted the name Monster Energy Company in 2012.

The Complainant is the owner of many trademark registrations for the sign MONSTER ENERGY (the "MONSTER ENERGY Trademark"), including the following:

- the European Union trademark MONSTER ENERGY with registration No. 004823563, registered on January 10, 2007 for goods in International Classes 5 and 32;
- the Belarusian trademark MONSTER ENERGY (figurative) with registration No. 44706, registered on June 7, 2013 for goods in International Classes 5, 32 and 33;
- the Belarusian trademark MONSTER ENERGY with registration No. 59945, registered on February 17, 2017 for goods in International Class 32; and
- the Belarusian trademark MONSTER ENERGY with registration No. 60998, registered on July 19, 2017 for goods in International Class 33.

The Complainant is also the owner of the domain name <monsterenergy.com>, at which it launched its official website on August 19, 2003.

The disputed domain name was registered on September 24, 2021. It is currently inactive.

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 identical to its MONSTER ENERGY Trademark, because it incorporates the trademark in its entirety. According to the Complainant, the disputed domain name falsely suggests that the associated website is operated by the Complainant to promote the Complainant's MONSTER ENERGY products.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has not authorized the Respondent to use the well-known MONSTER ENERGY Trademark in a domain name, and there is no contractual relationship between the

Parties. The Complainant adds that the Respondent is not commonly known by the disputed domain name and is not making a legitimate noncommercial or fair use of it.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the MONSTER ENERGY Trademark was registered and became well known in the United States and internationally well before the registration of the disputed domain name. According to the Complainant, given the extensive international reputation of the MONSTER ENERGY Trademark, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of this trademark.

The Complainant maintains that the Respondent is not making any *bona fide* use of the disputed domain name, which leads to an inactive webpage. According to the Complainant, the Respondent registered and is using the disputed domain name primarily for the purpose of disrupting the Complainant's business 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 trademark 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.

6. Discussion and Findings

6.1. Procedural issue – Language of the Proceeding

The language of the Registration Agreement for the disputed domain name Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including that the Complainant and its representatives in this proceeding have no knowledge of Russian and it would cause delay and additional expense if the Complainant were required to submit all documents translated into Russian in the proceeding, that the disputed domain name is in Latin script and contains the English words "monster" and "energy", which have no meaning in Russian, rather than Russian words, suggesting the Respondent understands English, and, lastly, that the Respondent has already taken part in a UDRP case in which English was the language of the proceeding (*Monster Energy Company v. Whois Agent, Whois Privacy Protection Service, Inc. / Artsiom Dryneuski*, WIPO Case No. [D2021-4064](#)).

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be conducted in English.

Having considered all the matters above, the Panel considers that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Issues

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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the MONSTER ENERGY Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the MONSTER ENERGY Trademark is reproduced within the disputed domain name without the addition of any other elements. Accordingly, the disputed domain name is identical to the MONSTER ENERGY Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

While 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 often impossible 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. 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 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 disputed domain name is identical to the well-known MONSTER ENERGY Trademark, which was registered internationally, including in Belarus, where the Respondent is located, many years before the registration of the disputed domain name, which is identical to it and thus carries a high risk of implied affiliation with the Complainant. The Respondent has not provided any plausible explanation why it has registered the disputed domain name, how it intends to use it, and how it could legitimately use it in good faith without the consent of the Complainant.

Based on the available record, the Panel therefore finds that 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.

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 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 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. While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness and reputation of the Complainant's MONSTER ENERGY Trademark, which is registered in Belarus, where the Respondent is located, the fact that the disputed domain name is identical to this trademark and thus carries a high risk of implied affiliation with the Complainant, the absence of a Response or evidence of any good faith use, and the implausibility of any good faith use to which the disputed domain name may be put without the consent of the Complainant. On this basis, 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.

Based on the available record, the Panel therefore 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, <monsterenergy.uno>, be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: November 2, 2023