

## **ADMINISTRATIVE PANEL DECISION**

Monster Energy Company v. Dharrius Al-Ghareibeh, UNLEASH THE BEAST  
FightStore

Case No. D2023-4164

### **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 Dharrius Al-Ghareibeh, UNLEASH THE BEAST FightStore, Australia.

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

The disputed domain name <unleashthebeast.com> is registered with Tucows Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 6, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 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 October 17, 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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 22, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on December 1, 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 develops, designs, and sells beverages.

The Complainant is the owner of the trademark UNLEASH THE BEAST! for beverages. Copies of readily-available trademark registration certificates have not been submitted by the Complainant. Instead, a list of the trademarks has been submitted but the list does not include registration information on the trademark UNLEASH THE BEAST! Prior UDRP decisions however affirm the following trademark registrations:

United States trademark registration No. 2769363, registered on September 30, 2003;  
United States trademark registration No. 4975822, registered June 14, 2016;  
European Union Trademark Registration No 005093174, registered on March 19, 2007.

The Complainant owns five domain names which include the trademark UNLEASH THE BEAST. These are <unleashthebeast.com>, <unleashthebeast.cn>, <unleashthebeast.monster>, <unleashthebeast.xyz>, and <unleashthebeast.info>.

The disputed domain name was registered on May 24, 2023, and resolves to an inactive page showing the following sentence “Sorry, this store is currently unavailable.”

As was confirmed by the Registrar, the Respondent’s business name seems to be Unleash the Beast Fightstore, and is based in Australia.

#### **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.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name contains the Complainant’s trademark UNLEASHTHEBEAST in its entirety with a misspelling which is the replacement of “e” with “a”.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant’s trademark is recognized by UDRP panels as being well-known. The Respondent is not authorized or licensed by the Complainant to use its trademark. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name as it was not licensed by the Complainant. There is no actual or contemplated bona fide or legitimate use of the domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant’s trademark is well-known. The Respondent must have known of the Complainant’s trademark. The passive holding of the disputed domain name by the Respondent constitutes bad faith registration and use. The disputed domain name leads to an inactive page. The Respondent registered and is using the disputed domain name in order to disrupt the Complainant’s business and/or for the purpose of attempting to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark.

## **B. Respondent**

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

## **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 the 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.

Based on the available record, the Panel finds the 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 Panel finds 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 as per section 1.9 as the disputed domain name replaces the letter "e" with the letter "a". [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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 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 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 may be deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case. The Respondent, despite being put on notice of the present dispute and having an opportunity to reply, 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.

Additionally, the disputed domain name is a typo of not only the Complainant's well-known mark but of its domain name registrations – including the ".com" version of its mark, whereby the Respondent's registration may mislead Internet users unaware of the one-letter difference between the disputed domain name and the Complainant's trademark.

Based on the available record, the Panel finds 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.

In the present case, the Panel notes that the Respondent must have been aware of the Complainant's trademark as it had been registered and in use more than 20 years before the registration of the disputed domain name. The Respondent has replaced only one letter which may well confuse Internet users based on such typo of not only the Complainant's well-known mark but of its domain name registrations – including the “.com” version of its mark(*ESPN, Inc v. XC2*, WIPO Case No. [D2005-0444](#)).

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 “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 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 the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name – a typo of not only the Complainant's well-known mark but of its domain name registrations – including the “.com” version of its mark, and 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. As to contemplated or potential good faith use, the Panel is mindful that the disputed domain name could possibly be used in a descriptive sense that (along with corresponding website content) may differentiate it from the Complainant's mark; however without the benefit of any explanation from the Respondent whatsoever, and in view of the renown of the Complainant's mark and also noting its several domain name registrations (listed above) matching that well-known mark – including the “.com” version, the Panel reaches its decision based on the record before it.

Based on the available record, the Panel finds that the 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 <unleashthabeast.com> be transferred to the Complainant.

*/Nayiri Boghossian/*

**Nayiri Boghossian**

Sole Panelist

Date: December 15, 2023