

ADMINISTRATIVE PANEL DECISION

Red Bull GmbH v. Mandysen
Case No. D2022-3517

1. The Parties

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

The Respondent is Mandysen, Singapore.

2. The Domain Name and Registrar

The disputed domain name <redbulll.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2022. On September 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 24, 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 September 26, 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 September 26, 2022.

The Center verified that the Complaint together with the amendment to the 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on October 21, 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 the producer of a famous energy drink under the mark RED BULL, among other beverages. Said energy drink was first sold in Austria in 1987 and has been on sale internationally since 1992. It is currently sold in 173 countries worldwide, with sales of 7.6 billion serving units reported in 2020. The Complainant invests very substantial amounts in its marketing efforts, including EUR 1.81 billion in 2019 and EUR 1.61 billion in 2020. The Complainant also claims tens of millions of followers on social media, and engagement in national and international sporting and cultural events. The strength and renown of the Complainant's RED BULL trademark have been recognized in numerous previous cases under the Policy. The Complainant operates its main website under "www.redbull.com".

The Complainant is the owner of a variety of registered trademarks in respect of the term RED BULL, including, for example, International Registered Trademark No. 961854A for the word mark RED BULL, registered on March 19, 2008 in International Classes 25, 28, 32, 41 and 43 and designated in respect of China and Singapore, the latter being the place where the Respondent claims to be based.

The disputed domain name was registered on June 4, 2022 and resolved to a website in the Chinese language offering pornographic content, and advertisements and links to other commercial websites also featuring adult content. Little is known regarding the Respondent, other than that it has provided an address in Singapore which the Complainant contends is false. The Respondent has not participated in the administrative proceeding. The Complainant issued a cease and desist letter to the Respondent dated August 9, 2022 but this did not meet with any reply.

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant owns a wide range of RED BULL registered trademarks which significantly predate the registration date of the disputed domain name. It has been acknowledged by previous UDRP panels that the Complainant's RED BULL trademark is internationally famous, has a very strong reputation and is widely known all over the world. The disputed domain name is confusingly similar to the Complainant's said mark since it contains this entirely. The addition of the third letter "l" to the Complainant's mark, being a typical example of misspelling of the Complainant's trademark (*i.e.* typosquatting), does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark: in fact, RED BULL is clearly recognizable within the disputed domain name. The generic Top-Level Domain ".com" of the disputed domain name may be disregarded under the first element confusing similarity test.

Rights or legitimate interests

The Complainant has not licensed or otherwise permitted the Respondent to use any of its RED BULL trademarks, or any variation thereof, in a domain name or otherwise. It is not reasonably conceivable that the Respondent could have any rights or legitimate interests in a domain name which incorporates the Complainant's said trademark without such license or authorization. The Respondent cannot assert that prior to any notice of this dispute it was making or had made demonstrable preparations to use the disputed

domain name in connection with a *bona fide* offering of goods or services, nor that it is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, since the disputed domain name resolves to a website in the Chinese language offering obscene pornographic content. Such use is commercial and excludes noncommercial use. Previous panels under the Policy have found that the use of a domain name to host a page containing adult content and sponsored listings to websites with adult content does not represent a *bona fide* offering where such links capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. The RED BULL trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Respondent is not commonly known by the disputed domain name as indicated by the Whois information). The Respondent registered the disputed domain name only in order to create a likelihood of confusion with the Complainant's trademark.

Registered and used in bad faith

Previous panels under the Policy have stated in various cases that the Complainant's trademark has a strong reputation and is known all over the world. The disputed domain name is confusingly similar to the Complainant's well-known trademark, and the Complainant reasonably infers that the Respondent knew, or should have known, that its registration would be confusingly similar to the Complainant's mark. Registration of a domain name in awareness of a reputed trademark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The further circumstances surrounding the registration and use of the disputed domain name point in the direction of bad faith, namely, the nature of the disputed domain name being a typographical variant of the well-known RED BULL trademark, the Respondent's failure to reply to a cease and desist letter, the Respondent's use of a privacy service to hide its identity, and a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of domain name, in particular taking into account that it resolves to a website offering obscene content and displaying advertisements and links to other websites with similar content.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element assessment under the Policy is usually made in two parts. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark. Secondly, such trademark is compared to the disputed domain name, typically on a straightforward side-by-side comparison, to determine identity or confusing similarity. If the trademark is identical to the disputed domain name, identity will generally be found. If the trademark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found. The generic Top-Level Domain (in this case ".com") may be disregarded for the purpose of

the comparison exercise, on the basis that it is merely a technical requirement of registration.

The Panel finds that the Complainant has UDRP-relevant rights in its RED BULL trademark as described in the factual background section above. Turning to the comparison process, the Panel notes that the disputed domain name incorporates said trademark in its entirety together with an additional letter “I”. This constitutes a typographical variant of the Complainant’s mark, whereby an accidental extra keystroke on the last letter “I” when typing the Complainant’s mark will give rise to the Second-Level Domain of the disputed domain name. Such typographical variants, being a common, obvious, or intentional misspelling of a trademark, are typically considered by panels under the Policy to be confusingly similar to the trademark from which they are derived (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and that the Complainant has carried its burden in terms of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to bring forward appropriate allegations and/or evidence demonstrating its rights or legitimate interests in the domain name concerned.

In the present case, the Complainant submits that it has not licensed or authorized the Respondent to use its RED BULL trademark in the disputed domain name, that it is not reasonably conceivable that the Respondent could have any rights or legitimate interests in a domain name which incorporates the Complainant’s said trademark without such license or authorization, that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, that the Respondent is not commonly known by the disputed domain name, and that the RED BULL trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds that these submissions, taken together, constitute a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of production therefore shifts to the Respondent.

The Respondent has failed to engage with the administrative proceeding and has not filed any response in this case which might have set out any alleged rights or legitimate interests in the disputed domain name. The website associated with the disputed domain name contained a large number of advertisements and links featuring pornographic content. There is no obvious link or connection to the term “redbull”. On the contrary, the Panel notes that the disputed domain name appears to be an obvious typographical variant of the Complainant’s well-known RED BULL mark. The Panel considers it more likely than not that the Respondent is seeking to maximize the traffic to its site, and thus the click-throughs on its advertising links, by using a domain name that is reasonably likely to be mistyped by users intending to visit the Complainant’s website at “www.redbull.com”. In this particular case, the additional letter “l” is capable of being generated very easily by multiple users who linger a moment too long after typing the second “l” of the Complainant’s mark, thus causing this keystroke to repeat, or alternatively by hitting the same key again in error. In these circumstances, the Respondent’s use of the disputed domain name cannot confer rights and legitimate interests upon it. Indeed, no rights or legitimate interests could be expected to derive from using another’s trademark to divert Internet users to a pornographic website (see, for example, the discussion in *Laboratoires Thea v. Peiji Zi*, WIPO Case No. [D2021-1045](#) and the related cases cited therein).

In all of these circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel is satisfied that the Complainant’s trademark has a strong reputation and is well-known on a global basis. The disputed domain name appears to be a deliberately selected typographical variant of such trademark. In these circumstances, it is reasonable for the Panel to infer on the balance of probabilities that the Respondent was aware of the Complainant’s mark when the disputed domain name was registered, and that the Respondent registered it with the intention of targeting the Complainant’s mark. The facts suggest that the purpose behind the Respondent’s registration of the disputed domain name was that the Respondent would benefit commercially from Internet traffic generated by users mistakenly typing the Respondent’s domain name when intending to type that of the Complainant. This could not be considered to be a good faith activity on any view.

Despite being notified of the Complainant's allegations of bad faith conduct, both in the Complaint and via an earlier cease and desist letter, the Respondent has failed to come forward with any explanation which might indicate an alternative good faith motivation in connection with its registration and use of the disputed domain name. Instead, the Respondent has chosen to remain silent. What is more, the Respondent appears to have provided an incomplete address on the Whois record for the disputed domain name. This suggests that it is seeking to avoid or is attempting to frustrate anticipated remedial action on the part of the Complainant. It is also reasonable to infer that this was done with a view to maximizing the length of time over which the Respondent could receive traffic resulting from Internet users mistyping the Complainant's mark and instead typing the disputed domain name. In the circumstances of the present case, the Panel finds that these matters also suggest bad faith on the Respondent's part.

In conclusion, the Panel finds that the Respondent registered the disputed domain name with knowledge of and intent to target the Complainant's RED BULL trademark by way of a confusingly similar typographical variant thereof, and that the Respondent subsequently pointed the disputed domain name to a website containing pornographic and other advertising content for its own commercial benefit. The Panel finds that this constitutes registration and use in bad faith in terms of paragraph 4(b)(iv) of the Policy.

Accordingly, the Complainant has carried its burden in terms of paragraph 4(a)(iii) 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 <redbull.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: November 4, 2022