

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. cenk erdogan Case No. D2023-2917

1. The Parties

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

The Respondent is cenk erdogan, Turkey.

2. The Domain Name and Registrar

The disputed domain name <unleashthenitrobeast.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2023. On July 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 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 (Dynadot, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 July 15, 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 July 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on August 25, 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 an American beverage company that manufactures, markets, and sells energy drinks. Founded in 1935 and formerly known as Hansen Beverage Company, the Complainant changed its name to Monster Energy Company on January 5, 2012.

In early 2002, the Complainant introduced its MONSTER ENERGY line of beverages in the United States, which prominently bore the Complainant's UNLEASH THE BEAST! mark. In 2003, the Complainant began selling its MONSTER ENERGY line of beverages internationally, with almost every can featuring the UNLEASH THE BEAST! mark. Over time, the Complainant has expanded the range of beverage products sold, which currently includes amongst others the UNLEASH THE NITRO BEAST!; UNLEASH THE BEAST!; UNLEASH THE SALTY BEAST!; UNLEASH THE CAFFEINE FREE BEAST!; UNLEASH THE ULTRA BEAST!; and UNLEASH THE DRAGON! beverages.

In the United States, the Complainant's energy drinks are sold in over 417,000 retail stores and outlets, whilst internationally, the Complainant now sells approximately 6 billion cans per year, generating approximately USD 13 billion per year.

In 2022 alone, the Complainant's sales in Turkey – where the Respondent is based according to the information provided by the Registrar - exceeded USD 22 million, whilst overall sales of the Complainant's drinks generated over USD 92 billion in estimated total retail revenues internationally.

Since 2002, in addition to beverages, the Complainant has used and continues to use its UNLEASH THE BEAST! and other trademarks belonging to its family of UNLEASH-formative marks (hereinafter, the UNLEASH Marks), in connection with various goods and services, including but not limited to: entertainment services, including video games, clothing, accessories, bags, sports gear, helmets, stickers, and decals, selling more than 42 billion cans of MONSTER ENERGY drinks worldwide, with nearly all of those cans featuring its UNLEASH THE BEAST! mark or another one of its UNLEASH Marks.

Moreover, the Complainant has widely advertised, marketed, and promoted its UNLEASH Marks together with its family of MONSTER marks, through the sponsorship of athletes, athletic teams, and athletic competitions in the United States and around the world.

The Complainant is the owner, amongst others, of the United States trademark registration Nos. 5820901 for UNLEASH THE BEAST! (wordmark), filed on January 16, 2019, and registered on July 30, 2019, in international class 43; and 5622925 for UNLEASH THE NITRO BEAST! (wordmark), filed on December 14, 2010, and registered on December 4, 2018, in international class 5, as per trademark registration certificates submitted as annex D to the Complaint.

The Complainant operates a website at the domain name <monsterenergy.com>, registered on August 19, 2003, where the UNLEASH THE BEAST! mark is prominently displayed. The Complainant's UNLEASH THE BEAST! mark is also featured on the Complainant's social media accounts and numerous articles have been published in internationally circulated magazines concerning the Complainant's energy drinks.

The disputed domain name was registered on March 14, 2023 and is currently pointed to a web page where the disputed domain name is being offered for sale at EUR 4,627.4.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical and confusingly similar to its trademark UNLEASH THE NITRO BEAST!.

With reference to the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent has in no way been authorized, licensed, or permitted by the Complainant or any other person or entity related to the Complainant, to use the UNLEASH THE NITRO BAST! mark in any way. The Complainant also states that the Respondent is not commonly known by the disputed domain name and that it is not making a *bona fide* or legitimate noncommercial or fair use of the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant submits that, in view of the prior registration and use of the UNLEASH THE NITRO BEAST! mark and of the Complainant's international reputation in the UNLEASH THE BEAST! mark, the Respondent could not have been unaware of Complainant and Complainant's well-known UNLEASH THE BEAST! trademark.

The Complainant emphasizes that the Respondent is also not making any *bona fide* use of the disputed domain name, since the disputed domain name leads to a web page where the disputed domain name is offered for sale for nearly USD 5,000. The Complainant thus contends that the Respondent registered, used, and is using 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.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

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 entirety of the UNLEASH THE NITRO BEAST! mark is reproduced within the disputed domain name with the sole omission of the exclamation point. Accordingly, the disputed domain name is confusingly similar to the Complainant's mark for the purposes of the Policy. [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.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 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 Panel also notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s marks.

Moreover, there is no indication before the Panel that the Respondent may be commonly known by the disputed domain name.

Furthermore, the Panel finds that the Respondent, by pointing the disputed domain name to a website where the disputed domain name is being offered for sale at nearly USD 5,000, has not made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, nor made a legitimate, noncommercial or fair use of the disputed domain name.

The Panel also finds that the disputed domain name, being almost identical to the Complainant’s UNLEASH THE NITRO BEAST! mark, is inherently misleading and UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used 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.

In view of the Complainant’s prior use of the UNLEASH THE NITRO BEAST! and UNLEASH THE BEAST! marks in connection with the Complainant’s energy drink products, including online via the Complainant’s official website and social media channels, and in light of the well-known character of the UNLEASH THE BEAST! Mark, recognized also in prior UDRP decisions, the Panel finds that the Respondent very likely registered the disputed domain name having the Complainant’s marks in mind.

Considering the virtual identity of the disputed domain name with the Complainant’s UNLEASH THE NITRO BEAST! mark and its pointing to a website where it is offered for sale at an amount of nearly USD 5,000, the Panel finds that the Respondent, on balance of probabilities, registered the disputed domain name primarily for the purpose of selling it to the Complainant at an amount exceeding the out-of-pocket costs directly

related to the disputed domain name according to paragraph 4(b)(i) of the Policy. [WIPO Overview 3.0](#), section 3.1.1.

The Panel also finds paragraph 4(b)(iv) of the Policy to be applicable in this case since the Respondent has attempted to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of such website.

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

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: September 8, 2023