

## **ADMINISTRATIVE PANEL DECISION**

Supplying Demand, Inc dba Liquid Death v. Anastasiia Tsymbaliuk  
Case No. D2024-0894

### **1. The Parties**

The Complainant is Supplying Demand, Inc dba Liquid Death, United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is Anastasiia Tsymbaliuk, Ukraine.

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

The disputed domain name <liquiddeath.site> is registered with Hosting Ukraine LLC (ua.ukraine) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2024, 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 (Redacted for Privacy, Privacy Protection, Hosting Ukraine LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2024, 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 March 11, 2024.

On March 8, 2024, the Center sent an email communication regarding the language of the proceeding in both Russian and English. On March 11, 2024, the Complainant confirmed its request to proceed in English, and the Respondent did not submit any comments.

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 English and Russian, and the proceedings commenced on March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 8, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 15, 2024. 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 manufacturer of canned mountain water, sparkling water, iced tea and flavored carbonated beverages. The Complainant started offering its products through its website in January 2019.

The Complainant is the owner of the following trademark registrations for the sign "LIQUID DEATH" (the "LIQUID DEATH trademark"):

- the United States Trademark LIQUID DEATH with registration No. 5430064, registered on March 20, 2018 for goods in International Class 32; and
- the International Trade mark LIQUID DEATH with registration No. 1581896, registered on February 3, 2021 for goods in International Classes 25 and 32 in a number of jurisdictions, including the European Union.

The Complainant is also the owner of the domain name <liquiddeath.com> which resolves to its official website.

The disputed domain name was registered on November 28, 2023. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to an English language website offering some of the Complainant's products.

#### **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 confusingly similar to its LIQUID DEATH trademark, because it incorporates the trademark in its entirety.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known as "Liquid Death", has not received any permission from the Complainant to use its LIQUID DEATH trademark, and does not own any relevant trademarks. The Complainant notes that the oldest of its LIQUID DEATH trademark pre-dates the registration of the disputed domain name by more than five years, and adds that its business has rapidly expanded and its LIQUID DEATH brand has become well established around the world.

The Complainant submits that the Respondent cannot claim a legitimate "fair use" interest in the disputed domain name, as it carries a risk of implied affiliation, because it is identical to its brand name and trademark which falsely implies an affiliation between the Respondent and the Complainant. The Complainant further states that the Respondent cannot claim to be making any legitimate use as a reseller, distributor, or service provider of the Complainant's products, because it has not been authorized by the Complainant to act as a

distributor of its goods, to use the Complainant's name and trademark in the disputed domain name, and to use its copyrighted product photographs on the website at the disputed domain name.

The Complainant further submits that since the Respondent is not part of the Complainant's authorized distribution network, the goods on offer at the Respondent's website were likely to be either counterfeit, parallel import, or grey market goods. The Complainant adds that the website at the disputed domain name did not disclose the lack of relationship with the Complainant, but used an identical favicon and displayed the Complainant's copyrighted product photographs, thus intentionally attempting to mislead Internet users into believing that the Respondent's website was authorized or endorsed by the Complainant. According to the Complainant, for the above reasons the website at the disputed domain name failed the Oki Data test.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the Complainant's LIQUID DEATH trademark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name. The Complainant submits that Internet users seeing the disputed domain name in search engine results would assume that it is connected with the Complainant, especially since the Complainant's official website is located at the almost identical domain name <liquiddeath.com>. The Complainant adds that any initial interest confusion was not dispelled upon the arrival of an Internet user on the website at the disputed domain name, because that website used the Complainant's LIQUID DEATH trademark and its logomark as favicon, and included copyrighted photographs copied from the Complainant's website, but did not include any disclaimer. According to the Complainant, given such content of the website at the disputed domain name, it is inconceivable that the Respondent did not have the Complainant in mind when it registered the disputed domain name. The Complainant adds that it is possible that the disputed domain name is being used in association with the sale of counterfeit goods, or products outside the Complainant's authorized supply chain.

The Complainant notes that the hosting provider took down the website at the disputed domain name on the Complainant's request, so the disputed domain name is currently inactive. Nevertheless, it is configured with mail exchanger ("MX") and Sender Policy Framework ("SPF") records and is therefore capable of email communication, which increases the risk of phishing or other fraudulent actions by the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural issue – Language of the proceeding**

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. Paragraph 11(a) allows the Panel to determine the language of the proceeding having regard to all the circumstances. In exercising its discretion to use a language other than that of the Registration Agreement, the Panel must 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1.

The Registrar has confirmed that the language of the registration agreement is Russian. The Complaint was filed in English and the Complainant has requested English to be the language of the proceeding.

In support of its language request, the Complainant notes that the disputed domain name is comprised of the English language words "liquid" and "death", and that the website at the disputed domain name used the

English language in terms such as “Buy now” alongside images of the Complainant’s products which exclusively featured the English language. According to the Complainant, this shows that the Respondent’s intent was to target English speaking Internet users and that it is familiar with the English language and will not be prejudiced by the Complaint being brought in English. The Complainant adds that it will be put to considerable expense and inconvenience to translate its submissions into Russian.

The Respondent did not make any comments with respect to the language of the proceeding. It did not object to the Complainant’s request that the language of the proceeding be English and did not bring forward any reasons why that would not be efficient or fair.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2. Further procedural considerations – Location of the Respondent**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The record shows that the Center’s Written Notice could not be delivered by postal mail to the Respondent’s mailing address disclosed by the Registrar, in terms of the paragraph 2(a)(i) of the UDRP Rules. However, it appears that the Notification of Complaint’s emails were delivered to the Respondent’s email address, as provided by the Registrar, and there is no evidence of unsuccessful delivery. The Notification of Complaint and the written communication were also sent by the Center via the Registrar’s privacy protection email address for the disputed domain name and at the privacy service postal address, and both were delivered.

The Respondent thus appears to have received notification of the Complaint and would have been able to formulate and file a Response in the administrative proceeding in case it wished to do so.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

### **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.

The Complainant has shown rights in respect of the LIQUID DEATH trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the LIQUID DEATH trademark is reproduced within the disputed domain name without the addition of any other elements. Accordingly, the disputed domain name is identical to the LIQUID DEATH trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 is 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 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.

Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. The Panel will therefore consider whether the Respondent complies with the so-called “Ok! Data test” (see section 2.8.1 of the [WIPO Overview 3.0](#)), which contains the following cumulative requirements:

- (i) the respondent must actually be offering the goods or services at issue;
  - (ii) the respondent must use the site to sell only the trademarked goods or services;
  - (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder;
- and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The risk of misrepresentation has led panels to find that a respondent lacks rights or legitimate interests in cases involving a domain name identical to the complainant’s trademark. [WIPO Overview](#), section 2.8.2.

The disputed domain name was registered in November 2023. It is identical to the LIQUID DEATH trademark. This creates a high risk of implied affiliation with the Complainant. [WIPO Overview](#), section 2.5.1.

In addition, the Panel notes that the Complainant owns the domain name <liquiddeath.com>, which it registered and started using more than five years earlier.

Prior to its deactivation pursuant to a request by the Complainant, the Respondent’s website resolved to an English language website that offered for sale products marked with the LIQUID DEATH trademark and apparently originating from the Complainant. The website did not identify the provider of the goods and did not contain any disclaimer for the lack of relationship with the Complainant.

Taking the above circumstances into account, the Panel finds that the Respondent’s conduct does not meet the requirements of the Ok! Data test, because the disputed domain name creates a high risk of implied affiliation with the Complainant, and the associated website does not accurately and prominently disclose the Respondent’s relationship with the same.

The Panel therefore 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.

The circumstances of this case point to a conclusion that the Respondent had knowledge of the Complainant and its LIQUID DEATH trademark when it registered and started using the disputed domain name, and that it targeted the Complainant with these actions for commercial gain. The LIQUID DEATH trademark was registered five years before the Respondent registered the disputed domain name in November 2023. The disputed domain name is identical to the Complainant's trademark and thus carries a high risk of implied affiliation with the Complainant, and the Respondent has used it for a website selling the Complainant's products without disclosing the lack of relationship with the Complainant. The fact that the disputed domain name has been configured for email correspondence only increases the risk of implied affiliation, as Internet users receiving communications from email accounts at the disputed domain name are likely to regard them as originating from the Complainant.

The Respondent has not brought forward any justification for the registration and use of the disputed domain name. In these circumstances, the Panel finds that the Respondent has registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the associated website, by creating a likelihood of confusion with the Complainant's LIQUID DEATH trademark as to the affiliation or endorsement of its website and of the products and services offered on it. The fact that now there is no website at the disputed domain name does not change the above conclusion, because its deactivation was made upon request by the Complainant.

Based on the available record, the Panel therefore 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, <liquiddeath.site>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: April 26, 2024