

ADMINISTRATIVE PANEL DECISION

Red Bull GmbH v. dening Xie
Case No. D2022-2004

1. The Parties

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

Respondent is dening Xie, China.

2. The Domain Name and Registrar

The disputed domain name <redbulldragsterday.com> (the “Domain Name”) is registered with Guangzhou Domains, Inc. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2022. On June 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On June 10, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant confirmed its request that English be the language of the proceeding on June 10, 2022. Respondent did not comment on the language of the proceeding.

The Center verified that 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 7, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on July 11, 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

Complainant is the producer of energy drinks including the RED BULL energy drink. The classic RED BULL energy drink was first sold in Austria in 1987 and internationally in 1992. Currently, the RED BULL energy drink is sold in 173 countries and sales volumes amounted over 7.6 billion serving units worldwide in 2020. Complainant is active on social media and is involved in many international events and sports activities, such as the Red Bull Dragsterday in which contestants build their own dragsters to be raced down a 1/8-mile drag strip.

Complainant and its related entities own numerous national and international trademark registrations and applications consisting of or containing the words “red bull” in over 180 jurisdictions worldwide, including China, where Respondent is located, for example:

- European Union Trade Mark no. 000052803 RED BULL registered on March 16, 2001;
- International Trademark no. 641378 RED BULL registered on February 24, 1995; and
- Chinese Trademark no. 6993056 RED BULL registered on May 28, 2014.

Complainant also owns and operates its main website under “www.redbull.com”.

The Domain Name was registered on September 9, 2021 and resolves to a website featuring adult content, with advertisements and links to third party commercial websites also featuring adult or gambling content.

On April 20, 2022 Complainant sent a cease and desist letter to Respondent in an attempt to resolve the matter on an amicable basis, stating that the registration and current use of the Domain Name is a violation of its trademark rights and requesting Respondent to transfer the Domain Name to Complainant. A reminder was sent on April 29, 2022. Respondent did not reply to either letters. Complainant then filed the current UDRP Complaint.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for RED BULL and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known RED BULL products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its Complaint in English. In its Complaint and email dated June 10, 2022, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: Complainant is unable to communicate in Chinese, and the time and costs required for translation of the Complaint would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant also contends that: the Domain Name is registered in Latin characters and wholly incorporates the terms "red bull" which are identical to Complainant's RED BULL trademark, while the terms "dragster" and "day" in the Domain Name are also English words. Complainant thus contends that for the above reasons, Respondent understands English.

In exercising its discretion to use a language other than that of the Registration Agreements for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the RED BULL trademarks, as noted above. Complainant has also submitted evidence, which supports that the RED BULL trademarks are widely known and a distinctive identifier of Complainant’s products and services. Complainant has therefore proven that it has the requisite rights in the RED BULL trademarks.

With Complainant’s rights in the RED BULL trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case, “.com”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s RED BULL trademarks. These trademarks are recognizable in the Domain Name. In particular, the Domain Name includes Complainant’s trademark RED BULL in its entirety, followed by the terms “dragster” and “day”. The addition of the terms “dragster” and “day” after the RED BULL trademark in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the RED BULL trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its RED BULL trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the RED BULL trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the RED BULL trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a page featuring adult or pornographic content, which has no connection with the terms “red bull” and “dragsterday”. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Further, the nature of the Domain Name carries a risk of implied affiliation with Complainant, as the terms “dragster” and “day” are directly associated with Complainant’s RED BULL business activities in the sporting sector (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(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 website 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 finds that Complainant provided ample evidence to show that registration and use of the RED BULL trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant’s RED BULL trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the RED BULL trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant’s trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent’s awareness of Complainant’s trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant’s RED BULL trademark in its entirety suggests Respondent’s actual knowledge of Complainant’s rights in the RED BULL trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. In addition, while the Domain Name includes Complainant’s trademark RED BULL in its entirety, it is followed by the terms “dragster” and “day” which are directly associated with

Complainant's RED BULL trademarks and business activities, and directly evokes Complainant's activities in the field of sporting activities, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name is in bad faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known RED BULL products and services of Complainant or authorized partners of Complainant. The use of the RED BULL mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to adult or pornographic content could result in causing confusion with Complainant's business and activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <redbulldragsterday.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: July 25, 2022