

## **ADMINISTRATIVE PANEL DECISION**

Monster Energy Company v. Michael Janzen, Mr. Sunshine Solar  
Case No. D2023-1581

### **1. The Parties**

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

Respondent is Michael Janzen, Mr. Sunshine Solar, United States.

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

The disputed domain name <monsterenergy.solar> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 Complainant on April 18, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 21, 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 Respondent of the Complaint, and the proceedings commenced on April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on May 16, 2023.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on May 22, 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**

Complainant develops, manufactures, and markets beverages under the MONSTER ENERGY mark to customers around the world. Complainant is the proprietor of a large number trademark registrations for marks including the MONSTER element, including United States Trademark Registration Number 3057061 for MONSTER ENERGY (word mark), registered on February 7, 2006 for goods in class 32, claiming a date of first use of March 27, 2002.

Complainant operates its primary consumer website at the domain name <monsterenergy.com>.

The disputed domain name was registered on March 8, 2023. It does not resolve to a website.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that, through extensive use and promotion since launching in 2002, the MONSTER and MONSTER ENERGY marks have become well-known around the world. Complainant's annual revenues from sales of its products exceed USD 13 billion, making it the best-selling energy drink in the United States market and the second-best selling energy drink in the world. The disputed domain name is identical to the MONSTER ENERGY mark.

Under the second element, Complainant states that Complainant has not authorized, licensed, or permitted Respondent, nor any person or entity, to use the MONSTER ENERGY mark in connection with registering a ".solar" domain name. There is no evidence that Respondent has been or was commonly known by the disputed domain name.

Under the third element, Complainant states that it is not conceivable that Respondent was unaware of its well-known MONSTER ENERGY mark when registering the disputed domain name. The disputed domain name, which is identical to Complainant's well-known mark, is being passively held in bad faith.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed 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 disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under 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”.

#### **A. Identical or Confusingly Similar**

Complainant has provided evidence establishing that it has trademark rights in the MONSTER ENERGY mark through registration in the United States and other jurisdictions. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

In comparing Complainant’s mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark, as it is identical to it.

It is the well-established view of UDRP panels that a generic Top Level Domain such as “.solar” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

#### **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent’s 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) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is 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 Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the MONSTER ENERGY mark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would establish Respondent’s rights therein. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services. The disputed domain name, which is identical to Complainant’s mark, is not being used to resolve to an active website. Under the circumstances, the Panel finds that there can be no basis for a finding of rights or legitimate interests.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its MONSTER ENERGY mark predates the registration of the disputed domain name by nearly 20 years. The disputed domain name identical to Complainant's MONSTER ENERGY mark. Accordingly, it is clear that Respondent had Complainant's mark in mind when registering the disputed domain name. Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that Respondent has, on balance, demonstrated bad faith use by passive holding of the disputed domain name. Such a finding is consistent with previous UDRP decisions, such as *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). See also [WIPO Overview 3.0](#), section 3.3. In particular, the disputed domain name is identical to Complainant's distinctive and well-established MONSTER ENERGY mark. Respondent has failed to file a response or to provide any evidence of a connection to a legitimate business related to Complainant's marks, nor of any actual or contemplated good-faith use of the disputed domain name. Under the circumstances, the Panel does not find any such use plausible.

Accordingly, the Panel finds that Complainant has established the third element under 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 disputed domain name <monsterenergy.solar> be transferred to Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: June 5, 2023