

ADMINISTRATIVE PANEL DECISION

The Trustees for the time being of the Nelson Mandela Foundation Trust v.
Johann Radauer, Johann Radauer GmbH
Case No. D2024-3855

1. The Parties

The Complainant is The Trustees for the time being of the Nelson Mandela Foundation Trust, South Africa, represented by Edward Nathan Sonnenbergs Inc., South Africa.

The Respondent is Johann Radauer, Johann Radauer GmbH, Austria, represented by Haeupl & Ellmeyer KG, Patentanwaltskanzlei, Austria.

2. The Domain Names and Registrar

The disputed domain names <power-mandela.com>, <powermandela.com>, and <powermandela.org> are registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Johann Radauer GmbH / Power Mandela Foundation/ Power Mandela Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 the amended Complaints on September 30, 2024, and October 4, 2024.

The Center verified that the Complaint together with the amended Complaints 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 October 7, 2024. In accordance with the Rules,

paragraph 5, the due date for Response was October 27, 2024. The Response was filed with the Center on October 26, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on November 1, 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.

The Panel noted that the Complainant stated in the Complaint that it proposed to make a supplemental filing, subject to the contents of the Response. On November 6, 2024, the Panel issued Procedural Order No. 1 to the Parties, which indicated, with reference to paragraphs 10 and 12 of the Rules, that in order to ensure an efficient administrative proceeding, supplemental filings would not be accepted.

4. Factual Background

The Complainant is the Trustees for the time being of the Nelson Mandela Foundation Trust, a trust created in terms of a trust deed executed on August 19, 1999 with number IT9259/99, and having a principal place of business at 107 Central Street, Houghton, Gauteng, 2198, South Africa. The Complainant is commonly known as the Nelson Mandela Foundation Trust, or simply the Nelson Mandela Foundation. It is a non-profit organization founded by the late former South African President, Nelson Mandela, to contribute to the making of a just society by promoting the vision, values and work of its founder, and to be the custodian of his legacy. According to the Complainant, it was its founder's express wish that his name and image should not be exploited or commercialized after his passing, which wish the Complainant is committed to protect.

The Complainant was authorized by its founder to register trademarks worldwide in respect of the marks MANDELA, NELSON MANDELA, and others, to support its endeavors, including in respect of social responsibility projects, with the earliest filing dates dating from 1999 and the earliest registration dates dating from 2005. For example, the Complainant is the owner of European Union Registered Trademark Number 17924463 in respect of the word mark MANDELA, registered on June 3, 2019, in Classes 9, 14, 16, 25, 28, 35, 38, and 41. The Complainant asserts that its trademarks are well-known.

The Complainant also claims unregistered trademark rights in said marks on the strength of the Complainant's initiatives and endeavors, including "Nelson Mandela International Day", which the Complainant states is globally known, the "Nelson Mandela Annual Lecture Series" featuring prominent global figures, and "The Mandela Initiative," a university-led national endeavor, each of which has its own dedicated website. The Complainant has maintained its principal website at "www.nelsonmandela.org" since 2002, which site details said initiatives and endeavors. The Complainant is active on social media platforms, and its Facebook page "Nelson Mandela Foundation" has been liked by over 240,000 people, and has over 246,000 followers, while the Complainant's page on X, "@NelsonMandela," has over 1,500,000 followers. Said pages prominently display the marks NELSON MANDELA and MANDELA. The Complainant has also registered multiple domain names containing the term "mandela".

The disputed domain names were registered on the following dates: <power-mandela.com> and <powermandela.com> on November 28, 2022, and <powermandela.org> on July 24, 2023. The disputed domain names all point to a website at "www.powermandela.com". The Complainant's screenshots of a website originally associated with <powermandela.org> dated April 12, 2024, and of the more recently published website dated August 22, 2024, show that these promote a "vital energy drink" named "Power Mandela", under a logo featuring a depiction of an African-style mask along with the words "POWER MANDELA Vital Energy Drink". An additional logo is featured, which uses the wording "DRINK + CARE" beneath a depiction of a droplet and a heart symbol.

On December 13, 2022, a person acting on behalf of the Respondent telephoned the Complainant and spoke to its acting CEO. Following the telephone conversation, said person sent an email to said acting CEO advising of "a project" entailing the development of an unspecified product, which the Respondent wished to develop in partnership with the Complainant. The email stated inter alia, "The project which is now

in process is a product Mr. Johann RADAUER thought about to express the main meaning of the work of Nelson Mandela. HIS ATTACHMENT TO OUR NATURE OF HUMAN BEING in working for peace and freedom for everyone on the earth. IF EVERYONE CAN BE CONSCIOUS OF THAT A LOT OF PROBLEMS OF THE EARTH CAN BE SOLVED. We have to put these values in a product available everywhere for anyone. Our idea is to develop THE PRODUCT with your Fondation [sic], to make it known, to manage it together. We aim at A PARTNERSHIP and the benefits of the PRODUCT have to be shared together, in a win-win part. We are going to present it to you at the first meeting and give you all the details.”

On January 10, 2023, a meeting took place between the Parties’ representatives at the Complainant’s offices. The Complainant’s account of said meeting is that the Respondent’s representatives stated that its proposed product was an energy drink which the Respondent intended to brand “POWER MANDELA”, that it wished to have a partnership with the Complainant and to have the Complainant authorize its use of the MANDELA trademark for the drink, with the offer for the Complainant to share in the resulting profits, adding that its business was not yet registered and there was no active website, although a business card was produced depicting the term “POWER MANDELA” and the website “www.power-mandela.com”. The Complainant says that it informed the Respondent’s representatives that its NELSON MANDELA and MANDELA marks are never licensed to third parties for commercial purposes, that the Complainant does not endorse initiatives in which it does not have direct involvement or collaborate with third parties unless there is a clear link to Nelson Mandela, and that it would object to the Respondent pursuing the proposed business.

The Complainant also claims that, at said meeting, the Respondent’s representatives stated that it would not pursue its plans without authorization from the Complainant. The Complainant says that it invited the Respondent to submit a written business plan regarding the Respondent’s project’s proposed connection with Nelson Mandela, although noting that this was unlikely to change the view that it had expressed.

The Respondent’s account of the meeting is different, stating that it was “completely harmonious,” and that the background to the meeting was that the Parties’ marks could peacefully co-exist. However, it does not appear to be in dispute that at the conclusion of said meeting, the Respondent was asked to write to the Complainant further about its plans and how these were linked to Nelson Mandela and his legacy.

The Complainant notes that subsequent to said meeting, it discovered that the Respondent had applied for POWER MANDELA trademarks in South Africa, which the Respondent had not mentioned during the meeting.

On January 16, 2023, the Respondent wrote to the Complainant setting out an example of consumer communication and the proposed relationship between the “Power Mandela” beverage, and the life and legacy of Nelson Mandela. The document goes into detail about how Nelson Mandela’s values are said to be mirrored in the beverage, and describes a partnership between the Parties. This further approach was rejected by the Complainant via a cease and desist letter issued by the Complainant’s representatives to the Respondent on January 18, 2023, whereby the Complainant sought inter alia the Respondent’s voluntary withdrawal of its trademark applications. The Respondent subsequently made trademark applications for the POWER MANDELA mark in a wide variety of jurisdictions and, on July 24, 2023, registered the disputed domain name <powermandela.org>. The Complainant states that it has since opposed the Respondent’s trademark applications. The Respondent’s position is that the Complainant’s cease and desist letter showed that it had changed its mind about cooperating with the Respondent following the meeting of January 10, 2023.

The Complainant produces a copy of a contract entitled “Name Use Agreement” between an individual named Mandela Amoako Boafo (“Mr. Boafo”) of Ghana and the Respondent company, dated April 19, 2019. Said contract narrates a meeting “about 13 years ago” between Mr. Ralf Thon of Germany ¹ and Mr. Boafo in which they “discussed a beverage” which would be an energy drink initially named “Vitality Energy”, whereupon Mr. Boafo stated that he would “gladly give his name for it”. The recital goes on to note that

¹ The Panel notes in passing that Mr. Thon was proposed in the email of December 13, 2022 to be an attendee at the meeting between the Parties’ representatives on January 10, 2023, and that it was his business card that was presented at such meeting.

Mr. Thon told the Respondent Mr. Radauer about this 12 years ago, whereupon he agreed to implement the project. The contract goes on to provide for a license to use Mr. Boafo's first name in connection with such beverage and to register the trademark POWER MANDELA therefor worldwide. Mr. Boafo is or was a missionary, and is now the Executive Director of the Drink and Care Power Mandela Foundation, the charitable wing of the Respondent's project. The Respondent produces five endorsements of its energy drink from various other clerics.

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 names.

Notably, the Complainant contends that the disputed domain names wholly incorporate the MANDELA mark, resulting in undeniable visual, aural and conceptual similarities, that the said mark is immediately recognizable in the disputed domain names and will automatically be associated with the late Nelson Mandela and the Complainant, and that the said mark forms the dominant and distinctive portion of the disputed domain names, while the additional word "power" is a dictionary word with no inherent distinctiveness, and is used entirely descriptively in the disputed domain names. The Complainant submits that confusing similarity also arises with its NELSON MANDELA mark because the MANDELA mark is used interchangeably therewith, and a reference to "Mandela" is a reference to the late Nelson Mandela.

The Complainant asserts that it has not authorized the registration or use of the disputed domain names, nor the use of the trademark POWER MANDELA. The Complainant states that it is not affiliated to or associated with the Respondent in any manner whatsoever, nor does the Respondent have any ties to the late Nelson Mandela. The Complainant contends that it is undeniable that the Respondent knew of the late Nelson Mandela when it registered the disputed domain names, as he is one of the world's most iconic leaders. The Complainant notes that the Respondent's correspondence, notably the email of December 13, 2022, links its proposed activities to the late Nelson Mandela, adding that as the Respondent has no ties to Mandela, it does not have a legitimate interest in the disputed domain names.

The Complainant asserts that the Respondent deliberately chose to use the surname of one of the world's most iconic leaders with the sole and deliberate intention of taking unfair, undue and unlawful advantage of the enormous reputation that vests in such name and trademark, adding that the Respondent cannot have rights or legitimate interests in the disputed domain names purely because it was inspired by the late Nelson Mandela. The Complainant submits that the Respondent cannot be said to be paying homage to Nelson Mandela, or seeking to honor him or his legacy, given that it is disregarding his express wishes not to commercialize his name.

The Complainant contends that the Respondent knew of the Complainant's endeavors when it registered the disputed domain names, and of Nelson Mandela and the MANDELA trademark, and that the reputation of such mark prompted the registration and use of the disputed domain names. The Complainant states that at the time of the registration of <powermandela.org>, the Parties had already had prior interactions, adding that at no stage of such interactions did the Respondent mention its registration of the disputed domain names <powermandela.com> and <power-mandela.com> or its application for a corresponding trademark, evidencing bad faith on the Respondent's part. Despite the Complainant communicating its disapproval, the Respondent proceeded to register the disputed domain name <powermandela.org> and filed additional trademark applications.

The Complainant contends that the Respondent intentionally sought to take unfair advantage of the MANDELA mark by gaining an undue, unfair and significant promotional and commercial advantage therefrom via the disputed domain names, adding that this is confirmed by the Respondent's wish to be associated with Nelson Mandela and his legacy, and the Complainant as custodian thereof. The Complainant submits that the registration and use of a domain name which is so obviously connected with a

well-known person by someone with no connection with that person suggests opportunistic bad faith. The Complainant notes that a previous case under the Policy involving the unauthorized use of the MANDELA mark in connection with software has held that the name's significance lies in the fact that it is Nelson Mandela's name and the trademark of the Complainant, and that, as the primary significance of the name "Mandela" is as the Complainant's trademark, its appropriation by another party in a domain name for a commercial purpose can be considered registration and use in bad faith. The Complainant contends that the same reasoning is true for energy drinks, which are equally unrelated to the Complainant's activities for which it has used the well-known MANDELA trademark.

The Complainant submits that the reputation of the MANDELA mark, and the confusing similarity to the disputed domain names means that they will inevitably call Nelson Mandela or such mark to mind, establishing a link to the Complainant and its trademarks, such that the public will be (mis)informed about the stature of the Respondent and its endeavors thereby, rendering its goods immediately more attractive, with the Respondent taking unfair advantage of the power of such attraction. The Complainant asserts that the attractive force of such mark will be diluted thereby, and that it may be tarnished by the associated websites, over which the Complainant has no control, resulting in irreparable harm.

The Complainant notes that the Respondent is also using the term "Power Mandela Foundation" on its website for its philanthropic arm, and asserts that this demonstrates bad faith due to its attempt to replicate the Complainant via its similarity to the Complainant's name, for which the Complainant holds the trademark NELSON MANDELA FOUNDATION. The Complainant asserts that this will lead to people being misled, and that the Respondent cannot adopt its trademarks, no matter how laudable its purpose might suggest, adding that the philanthropic element is only a part of the Respondent's business. The Complainant contends that persons encountering the disputed domain names will believe that they are dealing with the Complainant when they are not, or that the associated websites are affiliated with or endorsed by the Complainant.

The Complainant asserts that the Respondent has no ties to South Africa, or to the Complainant, or to Nelson Mandela, and has not contributed to that country's heritage, whereby it has registered the disputed domain name without good conscience, demonstrating bad faith.

The Complainant notes that in trademark opposition proceedings between the Parties, the Respondent has asserted that Mr. Boafo authorized the use of his name by the Respondent by way of a license agreement dated April 19, 2019, adding that no mention of any such license or of Mr. Boafo was made in the Parties' interactions in January 2023, and submitting that if the Respondent believed that such agreement allowed it to use the name in the disputed domain names, then it would have had no need to approach the Complainant.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that the famous person, Nelson Mandela, should be differentiated from the Complainant and its trademarks, adding that the Complainant only manages Nelson Mandela's legacy and has not achieved the equivalent fame, which cannot be transferred to it, and that no data-based evidence has been produced of the Complainant's fame. The Respondent asserts that Nelson Mandela died over ten years ago, that his importance and image are slowly fading, and that, for young people, he is "merely a historic person". The Respondent submits that this may be seen from the gradually decreasing fame of those persons providing the Nelson Mandela Annual Lecture Series, adding that the Complainant is practically unknown to the world population. The Respondent notes that "Mandela" is a common name in Africa, and that according to the Companies Tribunal of South Africa, the name "Nelson Mandela" attracts no formal legal protection.

The Respondent generally attacks the evidence that the Complainant offers as proof of the fame of its MANDELA trademark. The Respondent asserts that the printout of the Complainant's website dates from a year after the disputed domain names were registered, and does not reflect the correct point in time for

judging the present proceeding, adding that the Complainant had time to adjust said website's appearance. The Respondent submits that the Complainant should have provided visitor data for its website rather than a general claim to fame, adding that a user of such website would be unaware of the Complainant's ownership of the MANDELA trademark with respect to certain goods or services. The Respondent contends that the Complainant's website, its activities with lectures up to 2015, and its list of publications (not of sales or downloads thereof), are not proof of the extent of use of its trademarks, adding that as the apartheid era is historic, these are of minority interest only.

The Respondent asserts that its goods and services are different from those offered by the Complainant, and the Complainant's allegation that it possesses a well-known mark is inapposite, submitting that the fame of Nelson Mandela must be viewed distinctly therefrom, and that the focus must be on the market share, intensity, geographical extent, and duration of use thereof, adding that the protection of such marks is limited to exhibitions, cultural, and sporting activities, together with merchandising articles not mentioned by the Complainant. The Respondent contends that other market participants cannot be excluded from offering non-similar goods and services under the common name "Mandela" in a clearly delimited way where there is no overlap with those of the Complainant, and that there will be no consumer confusion, on the basis that the Complainant has not established a reputation that extends beyond the protection of its designated goods and services.

The Respondent asserts that the disputed domain names and the Complainant's MANDELA mark are dissimilar because the term "power" is at the beginning of the former, and "dominates the overall impression".

The Respondent denies the renown of the Complainant's trademarks, noting that the Complainant failed to provide evidence such as media reports of market shares of said trademarks, adding that ultimately it is a matter of how consumers perceive such trademarks and their association with applicable goods or services, and that a broadening of the scope of protection to cover beverages is out of the question. The Respondent disputes the Complainant's account of the Parties' meeting on January 10, 2023. The Respondent adds that it searched trademark registers and noted that the Complainant had not sought protection for its marks with regard to beverages, submitting that this is a clear message to a competitor that the mark should be freely usable therefor. The Respondent asserts that its original intention had been to produce its beverages in South Africa but that upon finding that there would be no cooperation with the Complainant, it decided to look elsewhere. The Respondent notes that there has been no decision on the various trademark opposition proceedings as yet.

The Respondent notes that the noncommercial aspect of its activity is legitimately linked with Mr. Boafo and the church in Ghana, and asserts that this constitutes a strong focus on non-profit activity. The Respondent notes that despite its description of Nelson Mandela's wishes, the Complainant is against a project to support poor people, as demonstrated by the support of said church. The Respondent states that it is against an unfounded pursuit by the Complainant to exclude the world from the use of the name "Mandela".

The Respondent asserts that it first registered the disputed domain names in November 2022, "months before" the Complainant ended the Parties' constructive conversation. The Respondent asserts that it started its "Power Mandela" project in 2005, demonstrated by the name use agreement with Mr. Boafo. The Respondent submits that the Complainant relies on the alleged well-known status of its trademarks on the topic of registration and use in bad faith, which status the Respondent denies. The Respondent asserts that bad faith conditions could only be found if the Respondent had stolen the idea to produce the said beverages from the Complainant before filing trademarks to exclude the Complainant from the market, adding that the Complainant has no interest in such beverages, and that its activities to protect the legacy of the famous person, Nelson Mandela, are in no way affected thereby.

6. Discussion and Findings

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.

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 entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, the prefix "power" with or without a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Complainant additionally asserted that it possesses unregistered trademark rights in the marks MANDELA and NELSON MANDELA. In light of the fact that the Complainant possesses corresponding registered trademarks, it is not necessary to assess its claim to unregistered rights for the purposes of the first element analysis under the Policy. To the extent that the Respondent challenges the fame of the Complainant's trademarks, this is not relevant to the first element analysis under the Policy.

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 names. Notably, the Complainant asserts that it has not authorized the registration or use of the disputed domain names, that it is not affiliated to or associated with the Respondent in any manner whatsoever, and that the Respondent has no ties to the late Nelson Mandela. The Panel therefore turns to the Respondent's case in rebuttal.

The essence of the Respondent's case on this topic is: (1) that the fame of the late Nelson Mandela does not equate or give rise to any fame of the Complainant's MANDELA mark, and that the Complainant has not established the fame of such mark, or that it is well-known on the present record; (2) that the Respondent is making or preparing to make a bona fide offering of goods or services under the common name "Mandela" (and/or under Mr. Boafo's first name) which is not similar to the goods or services covered by the Complainant's MANDELA mark, and that the Respondent cannot be impeded by the existence of such mark; and, (3) that insofar as the Respondent plans to develop its non-profit foundation, it is making a legitimate

noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue

The Panel finds that the Complainant has established the fame of the Complainant's MANDELA mark on the present record. This is intrinsically linked to the global fame of its eponymous founder, and, as such, there is every reason to view the Complainant's mark as a well-known trademark. Importantly, while the Respondent challenges the extracts from the Complainant's website as being merely self-generated evidence of its alleged fame, the Complainant also sets out the very significant extent of its public following on two substantial social media platforms, Facebook and X (formerly Twitter), which evidence the Respondent does not seek to contest. Equally, while the Respondent suggests that, over time, interest is waning in the Complainant's lecture series under the MANDELA mark, the evidence before the Panel demonstrates the contrary. Highly prominent people have contributed to the Complainant's lecture series in the relatively recent past, including Bill Gates, the co-chair of the Bill and Melinda Gates Foundation (2016), Amina J. Mohammed, the United Nations Deputy Secretary General (2017), Barack Obama, former President of the United States of America (2018), Mogoeng Mogoeng, South Africa's Chief Justice (2019), and Antonio Guterres, United Nations Secretary-General (2020). Furthermore, the fact that the MANDELA mark is regarded as distinctive and widely known has already been accepted in a previous case under the Policy, namely, *The Trustees for the time being of the Nelson Mandela Foundation Trust v. Domains By Proxy, LLC / Rafael Trevisan, Trevis, Inc.*, WIPO Case No. [D2019-0372](#). It must also be noted that the Respondent has provided no evidence to support its contention that the name "Mandela" is a common name, and the fact that it is used by Mr. Boafo is insufficient for such a finding.

Crucially, for the purposes of the present case, the fact that the Complainant and its mark are synonymous with the fame of the late Nelson Mandela is implicitly accepted by the email communication issued on behalf of the Respondent to the Complainant dated December 13, 2022. The Respondent's commercial project is described in such email as "a product [the Respondent] thought about to express the main meaning of the work of Nelson Mandela". This email was directed to the Complainant precisely because the Complainant was known by the Respondent to be the custodian of Nelson Mandela's legacy and the owner of related intellectual property rights. It is very significant to the merits of the Respondent's case therefore that the Respondent does not attempt to disavow the statement made on its behalf. In short, the Panel must ask itself, if the fame of the late Nelson Mandela was not intrinsically linked to the MANDELA mark, and to the Complainant as its proprietor and the custodian of the legacy, and if such fame was apparently waning with the passage of time according to the Respondent, why would the Respondent wish to have anything to do with the Complainant by way of a commercial partnership? There is no answer to this question in the Respondent's submissions and the absence of such speaks volumes to the Panel.

The Panel notes that the first two of the disputed domain names were registered just over two weeks before the approach was made to the Complainant on the Respondent's behalf. Based upon the content of the said email to the Complainant, and its proximity in time to the registration date of the said two disputed domain names, the Panel finds on the balance of probabilities that the Respondent's commercial activities were directly targeted to the Complainant's MANDELA mark and sought to take unfair advantage of it. The Panel considers it to be more probable than not that, by registering the two disputed domain names ahead of the meeting, the Respondent hoped to have some form of leverage over any partnership negotiations that might ensue. Consequently, while there appears to be an offering of goods contemplated in connection with the disputed domain names, such offering could not be considered to be bona fide in the circumstances of the present case because it has, at its root, the intention of benefitting unfairly from the fame and goodwill that is inherent in the Complainant's MANDELA mark, which is in no way differentiated from the disputed domain names by the addition of the neutral term "power".

The Panel finds that the term "power" coupled with the Complainant's MANDELA mark, is more likely than not to evoke Nelson Mandela and thus the Complainant and its trademarks, since, as a prominent leader, Nelson Mandela would be described by most people as being "in power" for many years. Such term is often used in association with great leaders from history, for example, to describe the power of their oratory or the power of their message to future generations, in this case, a legacy protected by the Complainant at its founder's behest. Given this finding, it matters not for present purposes that the Respondent seeks to make an offering of goods in a different use class from that covered by the Complainant's trademark. That is an

argument that requires to be made in alternative (trademark office) forums to that of the present administrative proceeding. As is not infrequently noted in cases under the Policy, trademark infringement (or, in this case, the alleged absence of any trademark infringement) and abusive registration of domain names under the Policy are not always the same thing, although there is some conceptual overlap (see *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule De Souza*, WIPO Case No. [D2003-0372](#)).

Before leaving this topic, the Panel must give consideration to the Respondent's production of the naming agreement entered into with Mr. Boafo in 2019. This document appears to have been produced in the hope that it provides some credibility to the notion that the Respondent's product has been long in the planning and that, rather than seeking to benefit from the Complainant's MANDELA trademark as the evidence might suggest, the Respondent always intended to use the term "Mandela" in furtherance of its agreement with Mr. Boafo, and that the Respondent's energy drink is named with reference to him. The problem for the Respondent is that none of this was raised in its prior correspondence with the Complainant, or, as far as the Panel can tell, at the meeting with the Complainant in January 2023. It was not set out in the Respondent's proposal letter to the Complainant of January 16, 2023, which, like the email of December 13, 2022, was entirely focused on the link to the Complainant and its eponymous founder. The Respondent's apparent intention to use Mr. Boafo's name in 2019 and the statement made in 2022 on the Respondent's behalf that the Respondent has "a product [the Respondent] thought about to express the main meaning of the work of Nelson Mandela" do not co-exist comfortably.

Furthermore, nothing has been produced by the Respondent dating from between 2005 and 2019 giving details of any activity that the Respondent pursued in support of the "Power Mandela" project over the period described in the recitals to the document, allegedly of some 12 or 13 years' duration. In short, the timeline with which the Panel has been presented commences with the naming agreement from 2019, shortly followed by the registration of the first two of the disputed domain names in 2022, this being followed 15 days later by the Respondent's approach to the Complainant. This suggests that the Complainant and its rights were front and center of the Respondent's mind at the material time.

Given that the Respondent now appears to maintain that it possesses an independent link to the name "Mandela" as used in its proposed product, the Panel asks itself again why the Respondent would have felt the need to have any commercial discussions with the Complainant in early 2023. Even if such discussions were felt to be useful to the Respondent's purpose, the Panel would have expected the Respondent to have set such naming link out as the background to its choice of name in the initial correspondence. Instead, it made a clear and unequivocal reference to the life and legacy of Nelson Mandela, to which the Complainant's mark is intrinsically linked. The fact that its backstory was not mentioned until after the Complainant had conclusively rejected the Respondent's overtures means that limited weight can be accorded to it. Furthermore, even if the Respondent should wish to maintain its position on this document in the face of the above analysis, the Panel considers that the Respondent's proposed product does not call to mind Mr. Boafo but rather the late Nelson Mandela, and the prior correspondence with the Complainant, issued by a person acting on behalf of the Respondent, makes it abundantly clear that the Respondent is of the same view, as it fails to mention Mr. Boafo while instead describing many attributes of Nelson Mandela.

Finally, on this topic, the Panel notes that while the Respondent's endeavor appears to have a charitable arm, the Respondent's activity under the "Power Mandela" name appears to be primarily a for-profit endeavor (Mr. Boafo's statement notes that "With the purchase of any of the three distinct flavors, pineapple, mango and classic, two cents automatically goes to our charity fund [...]"). Given that the Respondent's project is mainly commercial in nature, it cannot assert that it is making use of the disputed domain names without intent for commercial gain. In any event, to the extent that the Panel has already found that the Respondent's plan was to form an association with the Complainant's MANDELA mark, and that the Respondent's foundation would inevitably be confused with the Complainant's foundation (whose name is also the subject of a registered trademark), the Respondent's proposed noncommercial use itself could not be regarded as legitimate or fair within the meaning of paragraph 4(c)(iii) of the Policy.

The Panel 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.

In the present case, the Panel notes that the Respondent incorporated the Complainant's MANDELA mark in two of the disputed domain names, and approached the Complainant to seek a commercial partnership some 15 days later, with the third disputed domain name being registered some months after the Respondent's receipt of the Complainant's cease and desist notice. Even laying aside the fame of the Complainant's eponymous founder, which the Panel has found to be incorporated in the fame of the Complainant's trademark to the extent that it is well-known, the proximity in time between registration of the first two disputed domain names and the Respondent's approach for commercial discussions suggests that the said disputed domain names were registered with knowledge of the Complainant, and with an intent to gain a commercial benefit from an association with the Complainant's mark, and/or to obtain leverage in commercial negotiations. The Respondent's prior knowledge of the Complainant and its rights is likewise established prior to the registration of the third registered disputed domain name. The Respondent itself sets out in the Parties' correspondence the commercial benefit which it hoped to obtain by virtue of its use of the MANDELA mark (by implication of it obtaining the Complainant's imprimatur). The Panel finds that such use in the disputed domain names with the prefix word "power" to promote the Respondent's proposed beverage by the website associated with the disputed domain names, without the Complainant's consent, constitutes an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark, conform to paragraph 4(b)(iv) of the Policy. The Panel therefore finds that the disputed domain names were registered and have been used in bad faith within the meaning of the Policy.

The Panel accords limited weight to the Respondent's backstory involving the Respondent's alleged use of Mr. Boafo's first name for the reasons outlined in the preceding section, which are adopted here. To the extent that the Respondent planned for "Power Mandela" to reference Mr. Boafo's name, rather than the Complainant's MANDELA mark, the Panel finds that this use of the disputed domain names would in any event cause confusion with said mark due to the fact that the latter is well-known, and that the evidence on the present record shows that the Respondent knew this when it registered the first two of the disputed domain names, due to its approach to the Complainant shortly thereafter. Equally, the Panel cannot accord weight to the Respondent's endorsements issued by various clerics. All of those which bear a date, being four out of the five such endorsements, have dates in October 2024, after the Complaint was filed and long after the disputed domain names were registered. As such, the endorsements are ex post facto and have no influence or bearing on the present topic.

The Panel notes for completeness that the Parties are engaged in trademark opposition proceedings on an ongoing basis. Nothing in this decision is intended to influence the outcome of any such proceedings, and this decision is not addressed to any particular forum in which such proceedings may be live.

The Panel 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 names <power-mandela.com>, <powermandela.com>, and <powermandela.org> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: November 15, 2024