

ADMINISTRATIVE PANEL DECISION

Monster Energy Company v. Lynn Simon
Case No. D2024-4275

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 Lynn Simon, United States.

2. The Domain Name and Registrar

The disputed domain name <musclemonster.site> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to Complainant on October 18, 2024, 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 October 19, 2024.

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 October 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 11, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on November 18, 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.

In the course of reviewing the case file, the Panel sought to identify a URL for a website or other location at which Complainant's MUSCLE MONSTER product line was advertised and/or sold. Various social media and secondary market sources suggested that the product line may have been discontinued by Complainant but this possibility had not been noted or discussed in the Complaint. The Panel requested by its Administrative Panel Procedural Order No. 1 ("Administrative Order No. 1") of December 10, 2024, that Complainant "clarify whether and to what extent it continues to use the MUSCLE MONSTER trademark in commerce and, if the product line has been discontinued, how that discontinuation affects its legal arguments regarding Respondent's alleged abusive registration and use of that trademark in the disputed domain name". Complainant filed a responsive email with attachments on December 16, 2024. Respondent did not file a response by the stated due date of December 20, 2024.

4. Factual Background

Complainant is a United States-based enterprise, incorporated in the state of Delaware, in the business of designing, creating, developing, marketing, and selling beverages. Complainant sells its beverage products in countries around the world. Complainant began using its MONSTER ENERGY trademark in commerce for the promotion and sale of energy drinks as early as 2003. MONSTER ENERGY is one of the best-selling energy drink brands in the United States by unit volume and dollar value, and second best-selling energy drink brand worldwide. Complainant's worldwide gross sales of beverages in 2023 generated revenues of USD 8.08 billion. Complainant promotes its MONSTER ENERGY product line, inter alia, at its commercial website located at "www.monsterenergy.com/en-us".

Complainant introduced its MUSCLE MONSTER trademark in connection with a fitness-related protein enriched drink as early as 2013. Worldwide retail sales of MUSCLE MONSTER-branded drink exceeded USD 129 million. In addition to drinks, Complainant employed its MUSCLE MONSTER brand on goods and services, including clothing, accessories, bags, sports gear, etc.

In response to Administrative Order No. 1, Complainant confirmed that it no longer produces or offers products under the MUSCLE MONSTER trademark, and that it has not done so since December 2022. Complainant indicates that MUSCLE MONSTER drink products generally have a shelf life of two years, and it has referred to limited sales of its discontinued product line in the secondary market.¹

Complainant is the owner of registrations for the word trademark MUSCLE MONSTER, including on the Principal Register of the United States Patent and Trademark Office (USPTO), registration number 4,451,535, registration dated December 17, 2013, in international classes (ICs) 5, 29, and 30, covering, inter alia, vitamin fortified beverages, dairy-based beverages and ready to drink coffee-based beverages, and registration number 4,376,796, registration dated July 30, 2013, in ICs 5 and 32, covering nutritional supplements in liquid form, and soda and sports drinks, as further specified. Complainant also is owner of registration for the word trademark MUSCLE MONSTER on the register of the European Union Intellectual Property Office (EUIPO), registration number 013404991, registration dated March 26, 2015, in ICs 30 and 32, covering certain drink products.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to the Whois record the disputed domain name was initially registered on September 24, 2024. There is no indication on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its initial creation date.

¹In terms of secondary sales, the Panel had previously noted some sales of the discontinued product in Administrative Order No. 1.

There is no evidence on the record of this proceeding of any use of the disputed domain name by Respondent in connection with a website or otherwise. The disputed domain name resolves to an error message.

There is no commercial or other association between Complainant and Respondent.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it owns rights in the trademark MUSCLE MONSTER and that the disputed domain name is identical and/or confusingly similar to that trademark. Complainant argues that notwithstanding its discontinuance of producing and selling products under the MUSCLE MONSTER trademark, it continues to hold valid and subsisting rights in that trademark based, inter alia, on its registrations. Complainant contends that the MUSCLE MONSTER trademark retains "residual goodwill".

Complainant alleges that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) the disputed domain name is not being used in connection with a bona fide offering of goods or services; (2) Complainant has not authorized Respondent to use its trademark in the disputed domain name or otherwise; (3) Respondent has not been commonly known by the disputed domain name, and; (4) Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent registered the disputed domain name after Complainant's trademark became well-known in the United States and internationally, and Respondent was likely to have been aware of that trademark; (2) Respondent employed a privacy shield; (3) passive holding of the disputed domain name evidences bad faith where, as here, Complainant's trademark has a high degree of inherent or acquired distinctiveness.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery to the address used by Respondent in its record of registration was successful. There is no indication of difficulty in the Center's transmission of email to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;

(ii) respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) 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.

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.

Complainant continues to own valid and subsisting registrations in the United States and other jurisdictions for the trademark MUSCLE MONSTER. Although non-use of a trademark in commerce may in some circumstances constitute grounds for cancellation,² absent evidence of intent not to resume use, abandonment is not presumed prior to three consecutive years of nonuse as a matter of United States law.³ Complainant in its response to Administrative Order No. 1, through its counsel, has stated its intention not to abandon the MUSCLE MONSTER trademark, saying, inter alia, "Complainant has not foreclosed the possibility of reviving production under its MUSCLE MONSTER mark." Respondent has not objected to Complainant's claim to subsisting rights in the MUSCLE MONSTER trademark. The Panel will treat those rights as continuing.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here the top level domain ".site", 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 1.11.

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 Complainant, panels have recognized that proving 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

² As a general reference, see Article 19.1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights:

"Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use..."

³15 U.S. Code § 1127:

"A mark shall be deemed to be "abandoned" if ...:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark."

Respondent. As such, where Complainant, as here, 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 (although the burden of proof always remains on Complainant). If Respondent, as here, fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

There is no evidence on the record of this proceeding of any use, or preparations to use, the disputed domain name by Respondent. There is no evidence that Respondent has been commonly known by the disputed domain name, has acquired rights in that name or the term MUSCLE MONSTER, or has made legitimate noncommercial or fair use of the disputed domain name.

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 trademark MUSCLE MONSTER is considered to be a distinctive combination of terms on the basis of the relevant trademark registration. Respondent has not come forward with a legitimate basis for having selected that combination of terms in the disputed domain name notwithstanding Complainant's subsisting trademark registrations. Given that Complainant itself made direct sales to customers under the MUSCLE MONSTER trademark in December 2022, and that later sales are asserted in response to Administrative Order No. 1, it is not clear why Respondent would have adopted Complainant's trademark other than to take advantage of the reputation in that mark. Moreover, a simple Internet search returns search results identifying Complainant's discontinued product line and, given the evidence of current third-party outlets, the Panel concludes that Respondent knew or reasonably should have known of Complainant's rights in the MUSCLE MONSTER trademark when the disputed domain name was registered.

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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

This is not a paradigmatic passive use case in which there is a well-known brand targeted by a domain name registrant for which a legitimate use of the trademark terms is difficult to envision. Here, Complainant is the owner of rights in a trademark for a product line that it has so far discontinued, and for which it has reserved the possibility to resume production and sales. There are some residual sales in third-party outlets, but the

existing stock of previously produced drinks will reach its end of shelf life soon.⁴ (Whether and to what extent the resumption of production and sales might be problematic is unclear.) The disputed domain name was registered after the last sales by Complainant itself of Complainant's MUSCLE MONSTER product.

Nonetheless, the combination term MUSCLE MONSTER remains associated with Complainant's product line such that the terms are likely to attract Internet user attention to the disputed domain name. The terms retain an "Internet presence" associated with Complainant at least for the time being. As such, given that Respondent has not come forward with any legitimate reason for registration of the disputed domain name, and its non-use (or passive use), the Panel draws the conclusion on the balance of probabilities that Respondent was aware of Complainant and its trademarks when it registered the disputed domain name and sought to take advantage of the reputation in those marks.

The Panel finds that 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 <musclemonster.site> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: December 30, 2024

⁴Use of the disputed domain name in connection with a product not associated with Complainant's product line is not "inconceivable". For example, "muscle monster" could be the name of a hypothetical children's toy.