

## ADMINISTRATIVE PANEL DECISION

Drink LMNT, Inc. v. Marko Hert  
Case No. D2024-5348

### 1. The Parties

The Complainant is Drink LMNT, Inc., United States of America, represented by Wolf, Greenfield & Sacks, P.C., United States of America ("United States").

The Respondent is Marko Hert, Germany.

### 2. The Domain Name and Registrar

The disputed domain name <lmntblackfriday.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 30, 2024. On January 2, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 2, 2025, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 2025, 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 amendment to the Complaint on January 10, 2025.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on January 15, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 5, 2025.

The Center appointed Anna Carabelli as the sole panelist in this matter on February 11, 2025. 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**

As per the undisputed evidence provided with the Complaint, the Complainant is a United States based company engaged in the production and marketing of dietary supplement drink mixes under the trademark LMNT and DRINK LMNT since at least 2018. The Complainant's LMNT-branded products are offered for sale on the Complainant's website at <drinklmnt.com>, in Amazon stores and retail outlets such as Walmart, and are actively promoted on the social media platforms (LMNT Facebook page and Instagram @drinklmnt).

The Complainant owns the following trademark registrations consisting of or including LMNT:

- United States DRINKLMNT trademark registration No. 7078700, registered on June 13, 2023, in class 5;
- United States LMNT trademark registration No. 7196436, registered on October 17, 2023, in classes 5, 21 and 32 (collectively "LMNT Trademarks").

The disputed domain name was registered on November 30, 2024. As per the undisputed evidence provided with the Complaint, the disputed domain name resolved to a website mimicking the look of the Complainant's official website and displaying the Complainant's LMNT trademark, offering for sale the Complainant's related goods. At the time of this decision, the disputed domain name resolves to an inactive webpage displaying a notice that the site can't be reached ("Sorry, you have been blocked. You are unable to access lmntblackfriday.com").

#### **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.

Notably, the Complainant contends that:

- As a result of the Complainant's reputation and investments, the LMNT Trademarks are well recognized by consumers and firmly associated with the Complainant.
- The disputed domain name is confusingly similar to the Complainant's LMNT Trademarks.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name since:
  - (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent's use of the disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use. In this connection the Complainant contends that the Respondent is using the disputed domain name for illegal activity (i.e., impersonation/passing off and phishing scheme).
- The disputed domain name was registered and is being used in bad faith. The Respondent has registered and used the disputed domain name with an intent to trade on the goodwill and the reputation of the Complainant, and to attract for commercial gain Internet users to the Respondent's website by creating a likelihood of confusion with the LMNT Trademarks, and for the purpose of phishing activities.

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **5. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

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

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

### **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 disputed domain name incorporates the entire LMNT trademark and the dominant element "LMNT" of the DRINKLMNT trademark. Accordingly, the disputed domain name is confusingly similar to the Complainant's LMNT Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of the Top-Level Domain, such as ".com", is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms, here "blackfriday", 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 marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

The composition of the disputed domain name (comprising of the Complainant’s LMNT Trademarks) and the content of the website at the disputed domain name create a risk of Internet user confusion.

Furthermore, Panels have held that the use of a domain name for illegal activity like impersonation, as it is the case here, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1

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 disputed domain name is confusingly similar to the Complainant’s registered LMNT Trademarks. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. As to bad faith use, the evidence submitted with the Complaint shows that the disputed domain name resolved to an active website displaying the Complainant’s LMNT Trademarks, mimicking the look of the Complainant’s official website, and offering for sale the Complainant’s related goods.

All the above suggests that the Respondent was aware of and clearly targeted the Complainant’s LMNT Trademarks with a deliberate intent to create an impression of an association with the Complainant and to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark.

This is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy.

Furthermore, Panels have held that the use of a domain name for illegal activity here, impersonating the Complainant, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The fact that the disputed domain name does not currently point to an active website and merely resolves to a webpage stating that the site can't be reached, does not prevent a finding of bad faith under the passive holding doctrine given the totality of the circumstances in the present case. [WIPO Overview 3.0](#), section 3.3.

The Panel finds that the Complainant has established the third element of the Policy.

## **6. 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 <lmntblackfriday.com> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: February 25, 2025