

Decision for dispute CAC-UDRP-104970

Case number CAC-UDRP-104970

Time of filing 2022-11-10 09:48:57

Domain names hellenergy-hu.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization HELL ENERGY Magyarország Korlátolt Felelősségű Társaság

Complainant representative

Organization Oppenheim Ugyvedei Iroda

Respondent

Organization King Cobra

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <hellenergy-hu.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst many others:

- EU trade mark registration no. 009530511, registered on 3 May 2011, for the figurative mark HELL ENERGY, in class 32 of the Nice Classification; and
- EU trade mark registration no. 014749253, registered on 23 December 2016, for the word mark HELL ENERGY, in class 32 of the Nice Classification.

(Hereinafter, collectively or individually, 'the Complainant's trade mark'; 'the Complainant's trade mark HELL ENERGY'; or 'the trade mark HELL ENERGY' interchangeably).

At the time of writing, the disputed domain name does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

The Complainant is a Hungarian limited liability company established in 2004. The Complainant produces energy drinks and coffee beverages which are commercialised in more than 50 countries worldwide, including in the majority of the EU countries.

In addition to the trade marks mentioned in the section 'Identification of Rights' above, and numerous other trade marks, the Complainant advises that it owns the domain name <hellenergy.hu>, which was registered in 2006, and that such domain name is redirected to the Complainant's main website at www.hellenergy.com.

By way of relief, the Complainant seeks to obtain the ownership of the disputed domain name <hellenergy-hu.com> on the grounds advanced in section B below.

B. Legal grounds

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark HELL ENERGY, in so far as the disputed domain name consists of the term 'hellenergy' and the additional element '-hu' whose meaning coincides with the country code Top-Level Domain (ccTLD) for Hungary, which is the country where the Complainant is seated.

The Complainant further avers that the Complainant's company name is 'HELL Energy Magyarország Kft.', which has the meaning of 'Hell Energy Hungary' in the English language. Therefore, the disputed domain name may be perceived as an abbreviation of the English translation of the Complainant's name.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent's identity is unknown due to the privacy settings of the disputed domain name. Nonetheless, the Complainant further asserts that, regardless of the Respondent's identity, the Complainant did not authorise any third party to register the disputed domain name. Consequently, the Respondent has no rights of legitimate interest in respect of the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant states that the Respondent has registered the disputed domain name with the aim to intentionally mislead third parties against, and in the name of, the Complainant.

The Complainant reports (and provides evidence thereof) that the Respondent disguised himself as a member of the Complainant's own personnel to communicate with the Complainant's business partners, with a view to obtain a financial benefit thereof. The Respondent has made use of email addresses nearly identical to the Complainant's for that purpose.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the UDRP Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the UDRP Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'HELL ENERGY' since 2011.

The disputed domain name was registered on 28 June 2022, and it is composed of the terms 'hellenergy' and 'hu', which are joint by a hyphen.

The Complainant's trade mark HELL ENERGY is wholly incorporated into the disputed domain name. Furthermore, the contiguous acronym or abbreviation 'hu' in the disputed domain name string may potentially evoke the ccTLD for the country Hungary, which is where the Complainant has its seat of effective management.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark, the result of which being that the Complainant has succeeded under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

Having reviewed the case file, the Panel notes that the Complainant claims not to have authorised the Respondent to register the disputed domain name.

The Panel further notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP element. Instead, there is robust indicia that the Respondent has attempted to impersonate the Complainant, as discussed in section D below.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since at least 2011, including in Germany, where the Respondent appears to be domiciled;

- The Complainant operates its activities through the domain name <hellenergy.com> (registered in 2006). The Complainant is also the owner of the domain name <hellenergy.hu> (registered in 2006), which is redirected to the Complainant's official website;
- The disputed domain name <hellenergy-hu.com> was registered in 2022;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's lack of participation in the course of these UDRP proceedings.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.'

As mentioned in the section 'Identification of Rights', the Respondent's website does not resolve to an active website.

Notwithstanding the above, the Panel has considered the available record and found compelling indicia that the Respondent would have attempted to impersonate the Complainant by deceiving the Complainant's business partners to obtain financial advantage thereof, through the use of email addresses nearly identical to the Complainant's. The Respondent's behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

For the sake of completeness, the Panel takes stock of paragraph 3.3 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have recognised various types of evidence to support a finding of bad faith on the basis of the non-use of a domain name. In the case at hand, the Panel considers the most conducive factors to a ruling in favour of the Complainant under this Policy ground to be (i) the degree of distinctiveness or reputation of the Complainant's trade mark; (ii) the Respondent's default; and (iii) the implausibility of any good faith use to which the disputed domain name may be put.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **hellenergy-hu.com**: Transferred

PANELLISTS

Name	Gustavo Moser
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DATE OF PANEL DECISION 2022-12-08

Publish the Decision
