



WFDDR

WORLD FORUM FOR
DOMAIN DISPUTE
RESOLUTION

Red Ball Licensing, LLC)
321 Brandway Drive)
Silom, Bangkok, Thailand)
10500)

(Complainant))

v.)

BuyThisDomain, LLC)
100 Domainer Drive)
Des Moines, Iowa)
United States 50306)

(Respondent))

Domain Name in Dispute:
REDBALL.COM and

(the “Disputed Domain Name”)

Case Number:
WF-0923-2021

This case is a work of fiction which was prepared to demonstrate how the UDRP works. Names, characters, business, trademarks, domain names, companies, events and incidents are the products of imagination, though inspired by real domain name issues and UDRP cases. Any resemblance to actual persons, living or dead, names, businesses, trademarks, domain names, companies, events or incidents, is purely coincidental.

AGREED FACTS

1. The Complainant is a manufacturer and distributor of energy drinks based in Bangkok, Thailand. In 2003, its founder Mr. Chalerm Boon-Nam, created the unique formula for an energy drink using caffeine, carbonated water, baking soda and taurine, along with a local Thai fruit resembling red cherries for flavoring, which are commonly referred to as “red balls”. He called the drink “RED BALL” after the fruit and incorporated his company, Red Ball Licensing, LLC in Thailand shortly thereafter, in 2005.

2. From 2003 to 2006, RED BALL was sold throughout Thailand and enjoyed substantial popularity particularly amongst teenagers. It generated the equivalent of USD \$50,000.00 in 2003, \$100,000.00 in 2004, \$200,000.00 in 2005, and \$500,000.00 in 2006. By 2006, over 2 million bottles of the drink were sold annually throughout Thailand and it had become very popular in Bangkok's famous nightclub districts as a mixer with vodka.
3. In January of 2006, the Bangkok Daily News featured Mr. Boon-Nam on the front page of its business section and listed his company as the third fastest growing company in Thailand. In October of 2006, RED BALL was shown being consumed by one of Thailand's most popular singer's during a rehearsal in the society magazine, Hello Bangkok! In December of 2006, the Complainant ran a television commercial on the top Thai TV channel during prime time, which ran 18 times throughout the month. In March, 2006, Red Ball sponsored the national Pad Thai Championship held in Pattaya, an event which attracts more than 50,000 visitors each year from all over the world. Each serving of the estimated 100,000 dishes of Pad Thai served on the fairgrounds was served along with a cold glass of RED BALL which featured the Complainant's logo which consisted of a red ball with the words "Red Ball" written across the ball, diagonally from the bottom left to upper right as shown below, and each guest got to keep their glass. Mr. Boon-Nam himself handed the trophies out to the first, second, and third place winners and the story was carried in Sawasdee Magazine, the inflight magazine of Thai Airways.



4. On February 3, 2007 the Complainant obtained a trademark registration with IP Thailand, the national trademarks office, for RED BALL in connection with carbonated beverages, bearing registration No. 5556789. On February 19, 2007, the Complainant obtained a registration for its RED BALL logo with IP Thailand, in connection with carbonated beverages, t-shirts, drinking glasses, key chains, and a website featuring information about sporting events in Thailand, bearing Registration No. 559653. An application filed by the Complainant for RED BALL in connection with red balls used for sports was refused on December 15, 2007 as IP Thailand determined that the mark was descriptive.
5. Commencing in 2007, the Complainant took on a European investor, Ms. Vile Geld, who had tried RED BALL while visiting Phuket as a tourist in 2006, and who wanted to bring the drink to the European and North American markets. Ms. Geld executed manufacturing and distribution deals with companies in Vienna and Atlanta in late 2007 and by November 1,

2010 RED BALL was being distributed in the US and in Europe. In the first six months of 2010, the Complainant had sold 300,000 bottles of RED BALL throughout the United States. By the end of 2015, RED BALL reached European annual sales of €10,000,000 and North American annual sales of USD \$50,000,000.

6. In June of 2010, the Complainant was the title sponsor for the North American Pickle Ball Classic, held in Brooklyn, New York which attracted 1,500 attendees and which was carried live on ESPN. From 2003 to-date, the Complainant has spent over USD \$30 million on advertising, sponsorships, and marketing throughout the world. Currently, the Complainant sells over USD \$600 million in RED BALL beverages worldwide, with the majority of its sales being in Thailand, Europe, and the United States.
7. At the Iowa State fair in Des Moines held in August, 2010, there was a RED BALL tent where attendees could sample RED BALL for free. The Complainant held such fairs in 25 states that summer.
8. The Complainant's primary website is DrinkRedBall.com (registered March 1, 2006) and it also owns and operates Redball.com.th (registered June 4, 2003) for the Thai market, RedBall.co.uk for the UK market, as well as owns numerous other Red BALL ccTLDs which forward to the .com website and which were all registered since 2010.
9. The Complainant is the owner of a registered trademark for RED BALL in the United States in connection with carbonated beverages, filed February 3, 2010 and registered December 11, 2011, bearing Registration No. 8675309, and also for its logo, bearing Registration No. 8675310, also filed February 3, 2010 and registered December 11, 2011, with dates of first use in commerce in the United States of February 3, 2010. The Complainant has 67 trademarks throughout the world in various national trademark registries, all registered since 2010.
10. In June of 2021, the Complainant's new Director of Marketing, Archi Eureka, decided that it was crucial for the Complainant to own RedBall.com so that it could transition away from its DrinkRedBall.com domain name and begin using a domain name that exactly corresponded to its brand.
11. Mr. Eureka visited RedBall.com on the Internet and saw that the website stated that the Domain Name "May be For Sale" and also included five 'pay-per-click' advertising links. Mr. Eureka took a screen shot of the page. The first, third and fourth PPC links were for sporting goods. The text of the second link was "Gatorade – fueling winners". The text of the fifth link was "Thailand – prepare to be amazed". Archive.org shows that the domain name was used for similar PPC ads starting one week after the Respondent acquired the domain name.
12. Mr. Eureka looked up the Whois for the domain name and saw that it was privacy protected but he was able to send an email on June 3, 2021 to an anonymized email address that would apparently go to the registrant of the domain name. Mr. Eureka wrote from an anonymous

Gmail address and didn't use his real name; "Hi there, I saw that you registered RedBall.com and are offering it for sale. I would like to offer you \$500 for it." No response was received.

13. On June 10, 2021, Mr. Eureka wrote again to the registrant, as follows: "I haven't heard back from you. I would like to offer you \$5,000 for the domain name if you can transfer it to me right away."
14. The Respondent then replied; "Thanks for your email. The price for this domain name is \$500,000.00. Redball.com is worth a lot more than \$5,000 to the right company."
15. Mr. Eureka then contacted the Complainant's counsel who wrote a demand letter to the registrant identifying the Complainant, the Complainant's trademarks, and demanding that the domain name be immediately transferred, or the Complainant would commence a UDRP proceeding.
16. The Respondent is an Iowan registered limited liability company that trades in generic, descriptive, acronym, and otherwise non-infringing domain names. It was registered as an LLC in 2000 and its owner, Ms. Coniecturas (Connie) Domainus has been investing in domain names for over 20 years.
17. The Respondent registered the domain name, RedBall.com on December 2, 2010. The domain name had been listed in a public auction of expired domain names on Lido.com, one of the leading aftermarkets for domain names. There were 21 anonymous bidders but the Respondent won the auction with a winning bid of USD \$80,000.00. The prior registrant had been a sporting good store in New York City, which had owned it for 10 years and which had previously used it to forward to their main website, WeGotBalls.com.
18. Upon winning the auction, the Respondent immediately added it to his company's website where she promoted the domain name as a "Premium Generic Domain Name" with an asking price of USD \$500,000.00. Redball.com is the highest valued domain name listed, with the next highest at \$250,000.00. The domain name is displayed on the website along with a logo that the Respondent designed herself to promote the sale of the domain name. The logo features a red ball with the word, RedBall.com embossed upon it in black letters:



19. The Respondent also listed it for sale with SaleNic.com, which automatically generated a website for the domain name which showed a basketball net as the background and populated

the website with five PPC links, as aforesaid. The website also stated that “This Domain Name May be For Sale”. All inquiries to the website would be routed to the Respondent for consideration and SaleNic.com would get a commission of 15% from any sale through the website. The PPC revenue would also be shared between SaleNic.com and the Respondent.

20. In early 2015, the Respondent used the PPC provider’s web interface to block any links that included the keywords “red”, “ball”, “energy and “drink”.
21. A SaleNic.com broker, Sam Taggart, retained by the Respondent to help sell domains in the Respondent’s portfolio, marketed the domain name to end-users. In mid-2015, Mr. Taggart contacted the Complainant by email and stated therein, “This premium domain name is for sale. In researching possible end-users for this domain name, your company was one of the many companies worldwide that might be interested in acquiring the domain name. Please contact me if interested.”. The Complainant’s former Director of Marketing at the time responded by saying, “Thanks but we are not interested at this time.” Mr. Taggart also contemporaneously contacted four other REDBALL trademark owners using similar solicitations. Two of them had acquired trademark rights subsequent to the Respondent’s acquisition of the domain name. Of these four other companies, three expressed an interest in the Redball.com domain name, but their levels of interest were all far below the Respondent’s price expectations.
22. In addition to owning RedBall.com, the Respondent also owns GreenBalloons.com, RedNet.com, PurpleClover.com, and YellowSnow.com, all registered in 2003 - amongst over 20,000 domain names owned by the Respondent. All of these domain names are featured on the Respondent’s own website as “Premium Generic Domain Names” and all are also similarly offered for sale via SaleNic.com. The Respondent previously sold GoldenTrophy.com for USD \$25,000.00 in 2004 and RedBird.com for USD \$100,000.00 in 2012, both of which the Respondent registered in 2003 after acquiring them at public auctions of expired domain names.
23. Respondent has been involved in three previous UDRP disputes. It lost a UDRP over GreenAcres.com to a Danish manure company due to some infringing PPC links. It prevailed in disputes over Kingfisher.com (by an Indian airline) and Squirrel.com (by a bank).
24. A search of the WIPO Global Brand Database shows that in addition to the dozens of trademarks owned by the Complainant, there are hundreds of trademarks registered by third parties for all manner of goods and services, all over the world, and many of these companies have red ball-formative websites with domain names registered both before and long after the registration of the disputed domain names. For example, there is; a) REDBALL registered in the USPTO by an American company in connection with power operated sprayers for use in agriculture, which operates at RedBall.us; b) RED BALL LOGISTICS registered by a Spanish company in connection with marine insurance, custom agencies, and financial business which operates at RedBall.es; and c) REDBALL registered in Japan by a Japanese company in connection with wet suits, floats and air tanks, which operates at RedBall.co.jp.

Each of these aforementioned registrations were registered after the Disputed Domain Name. None of these companies are nearly as well known as the Complainant.

25. A recent Google search shows that most of the links on the first page of hits are for the Complainant, however Wikipedia states that “red ball is jargon for a high profile police case” and is also “the object ball that is neither player’s cue ball in carom billiards”.
26. Ancestry.com shows that there are 38 people throughout the world whose surname is Redball. Redball is also a town in Belgium.
27. The Respondent has elected to have this dispute decided by a three-member Panel.