

Decision for dispute CAC-UDRP-100788

Case number	CAC-UDRP-100788
-------------	------------------------

Time of filing	2014-04-15 14:00:31
----------------	----------------------------

Domain names	stellar.org
--------------	--------------------

Case administrator

Name	Lada Válková (Case admin)
------	----------------------------------

Complainant

Organization	Stellar Ltd.
--------------	---------------------

Complainant representative

Organization	AC Tischendorf Rechtsanwälte Partnerschaft mbB
--------------	---

Respondent

Name	David Egelmeers
------	------------------------

Respondent representative

Organization	Boehmert & Boehmert Lawfirm
--------------	--

OTHER LEGAL PROCEEDINGS

none

IDENTIFICATION OF RIGHTS

The Complainant is owner of the International trademark Registration (IR) 868608 of August 5, 2005 for the word "STELLAR" for services in class 35 for 19 designated jurisdictions, which IR is based on a national UK trademark of 2003.

FACTUAL BACKGROUND

The Complainant is a company whose function is to own the STELLAR trademarks identified above under "Identification of rights" (the "Trademarks") on behalf of all future practitioners. Stellar is an open-source whole-system architecture that offers a frame for the design of strategies that are both aligned with an enterprise's unique value-creation capability, and optimally

adapted to the world of complexity.

The Respondent has registered the disputed domain name on February 2, 2011.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Under the Trademarks, the Complainant offers services in the area of business consultancy. For this reason the Complainant has registered the Trademarks and the Complainant is well-known under the Trademarks which are well-known and famous.

The Respondent has registered the Domain Name which is identical to the well-known and famous Trademarks without having any rights or legitimate interest in the Domain Name. The Respondent was offering the same services on the website under the Domain Name as the Complainant.

The Complainant has sent a cease and desist letter to the Respondent on February 7, 2014. The Respondent did not reply at all and did especially not sign the required undertaking declaration. The Complainant discovered that Respondent only deleted the contents on the website under the Domain Name. This website presently states "Site off-line We are currently offline."

The Respondent is creating a likelihood of confusion as he uses the Trademarks as Domain Name and has offered identical services on his website under the Domain Name also using the Complainant's registered "STELLAR" logo device mark for commercial gain, in particular to acquire new clients.

The Respondent is purporting to grant certification, accreditation and other forms of endorsement to the "STELLAR" trade mark. Furthermore users of the Trademarks and architecture are not entitled in any way (directly or indirectly) to claim to be "officially" connected with or endorsed by the Complainant or the Stellar architecture. The use of "Stellar" as part of the Domain Name by Respondent includes a direct reference to the Trademarks and amounts to such a claim and is an attempt to establish an unfair advantage over other legitimate users of the STELLAR architecture by using the well-known Trademarks.

The Complainant is restraint in the exercise of its rights of the Trademarks because of the registration of the Domain Name in bad faith.

RESPONDENT:

The Respondent is a private individual living in the Netherlands. Until recently the Respondent offered business consultation services as part of his freelance consultancy and was member of the network Stellar Global Partnership.

Stellar is a concept for analyzing and improving business structures within a company developed by Angus Jenkinson and Richard Leachman in 2002-2004. In 2004 Kathelijne Drenth joined the team of developers. Stellar is an open-source-project meaning that it is free to use and to improve for everyone. Companies benefit when practitioners experienced in its use take advantage of its methodology. A system of training practitioners supported by the Complainant existed for a number of years before this was terminated in 2011 after which each practitioner is free to train in their own name. A Stellar Network was formed in 2007 to spread and further develop the Stellar concept. On a Stellar Network meeting in February 2012 in Potsdam, Germany a renewed Stellar Network was planned that came to be called "Stellar Global Partnership." This had the intention of encouraging greater collaborative work.

The name STELLAR originally has been registered by Angus Jenkinson and Richard Leachman as UK trademark registration 2350826. Purpose of the trademark registration was to secure all practitioners free use of the name STELLAR and the STELLAR logo. The Complainant was established exclusively to take over the administration of the Trademarks. Spreading and further developing the Stellar concept on the other hand was in the exclusive responsibility of the Stellar practitioners, including the Stellar Network. Therefore, the Complainant never offered services in the area of business consultancy as asserted. Even

when accreditation training took place, this was done by practitioners and the Complainant simply recognized what they have done. The Complainant was formed by Angus Jenkinson, Richard Leachman and Kathelijne Drenth in equal shares with each stakeholder holding the office of an authorized director of the company. At least all certified members of the Stellar Network have been entitled to use the Stellar concept, materials, Trademarks and logo. Actually, the use of the Trademarks by all practitioners was the sole purpose for registering the Trademarks from the beginning. Therefore, as a certified practitioner the Respondent was entitled to use not only the Stellar concept and materials but also the Trademarks and logo. In close cooperation with Angus Jenkinson an authorized director of the Complainant he was committed to spreading and further developing the Stellar concept.

In 2011 the Respondent came across the opportunity to buy the domain stellar.org. He and Angus Jenkinson purchased the respective domain in February 2011 in equal shares to build up a platform for general information and research on the Stellar concept open to all members of the Stellar Network as well as any interested party. As the Complainant had made the decision not to have any bank account nor to engage in any trading it had no means of acquiring the Domain Name, which might otherwise have gone to a competing organization. The Complainant's other directors have known about the purchase of the Domain Name since August 2011, the latest.

The platform provided on the website under the Domain Name went online in early 2012. Besides general information on the Stellar concept, the website offered a login area where Stellar practitioners had the opportunity to access Stellar materials, further develop such materials and provide enhanced materials for the use and/or further development by other members of the Stellar network. The Domain Name has never been used, however, to promote the Respondent's and/or Angus Jenkinson's consultancy services.

In the last few years the Complainant's shareholders came into increasing conflict, in the course of which Angus Jenkinson's directorship ended on May 10, 2013. Recently, the Complainant started sending written warnings to certified members of the Stellar Network, based on an alleged infringement of the Trademarks. Presumably, this conduct as well as the Complaint brought forward against the Respondent aims on monopolizing the open source concept in favor of the remaining directors of the Complainant and their consultancy services promoted on their respective websites. In response to the cease and desist letter sent by the Complainant on January 23, 2014 the Respondent preliminarily took down the website under the Domain Name to avoid further harassment by the Complainant.

The Respondent admits that it is true that the Domain Name is identical to the Trademarks.

Based on the foregoing facts and considerations, it is evident that the Respondent as a certified Stellar practitioner is entitled to use the Stellar concept, materials, Trademarks and logo for his consultancy services based on the Stellar concept. The Complainant himself states that it was formed to own the Trademarks "on behalf of all future practitioners [...] It defends the trademark where necessary to safeguard the spirit and practice of open-source, and to prevent claims of ownership or exclusivity". A fortiori the Respondent is entitled to use the Trademarks to promote the Stellar concept itself and stimulate further research within the Stellar Network which is in perfect accordance with the open-source spirit of the Stellar concept. However, the Respondent did not even use the Domain Name himself but purchased it in cooperation with Angus Jenkinson, an authorized director of the Complainant at the time of acquisition of the Domain Name. The platform provided on the website under the Domain Name has primarily been administered by the Stepping Stones Consultancy Ltd. a company owned by Angus Jenkinson. It cannot be in question that Angus Jenkinson as a co-founder of the Stellar concept and an authorized director of the Complainant at the time has been and still is entitled to such use of the Domain Name.

Even if the Respondent would not have been entitled to use the Stellar trademark and would have used the Domain Name to promote his own consultancy services, as an certified Stellar practitioner, he could refer to a legitimate interest formed by a bona fide offering of goods under the so-called Oki Data doctrine. Further, the Trademarks as a descriptive term are not very distinctive and were registered and used by numerous other companies. The Complainant is more or less unknown, however, far from being well-known or famous under the Trademarks.

The Respondent has not registered and used the domain names in bad faith. It clearly follows from the foregoing facts and considerations that the Respondent purchased the Domain Name with the intent to build up a platform promoting the Stellar

concept and facilitating its further research, both motives being in full accordance with the open-source idea of Stellar. He purchased the website in cooperation and with consent of Angus Jenkinson a co-founder of the Stellar concept and at the time of registration an authorized director of the complainant. Under those circumstances he had no reason to doubt his authority to purchase the disputed domain name. He acquired the Domain Name in good faith.

Since there is no such bad faith registration, it is irrelevant if the Respondent would have later used the Domain Name in bad faith. However, he never did. In particular the Respondent did not use the Domain Name to intentionally attract, for commercial gain, Internet users to the platform under the Domain Name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the platform, as alleged by the Complainant. The website under the Domain Name did not serve the commercial interest of the Respondent and/or Angus Jenkinson besides the indirect positive effects resulting from promoting the Stellar concept in general. The Respondent's consultancy services were not even mentioned on the website. Furthermore, the website clearly presented the open source idea and the history behind the Stellar concept and did not suggest any false claims in the Stellar concept or the Trademark and logo.

The Complainant is using the Policy in bad faith to attempt to deprive the Respondent of the Domain Name. The Complainant by offering false allegations in full awareness of the true facts of the case clearly indicated his knowledge in the insubstantiality of its claim for a transfer of the Domain Name. By trying to hide obviously fundamental facts from the Panel the Complainant is trying to exploit the administrative proceedings to gain an ill-founded claim to the Domain Name. Therefore, the Complaint forms a clear attempt of Reverse Domain Hijacking and the Panel is respectfully requested to declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the 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 Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

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

PROCEDURAL FACTORS

The Complainant has filed two and the Respondent one unsolicited supplemental submissions, which all concern the Respondent's allegation of Reverse Domain Name Hijacking and the question if supplemental submissions are admissible.

The Rules do not provide that parties can submit supplemental filings after the submission of the Complaint and Response. According to paragraph 12 of the Rules the Panel may request, in its sole discretion, further statements or documents from either of the Parties in addition to the Complaint and the Response.

Although the Rules only grant the Panel the right to request supplemental filings, it does not explicitly deny the Complainant and Respondent to submit such filings. It is therefore for the Panel to decide if such submission is admissible.

Because of the nature of these panel proceedings, which require a fast decision on the basis of limited possibilities to investigate all details of the dispute, the Panel considers it undesirable that submissions are easily admissible. In this respect, the Panel agrees with the reasoning of the panel in *Delikomat Betriebsverpflegung Gesellschaft m.b.H. v. Alexander Lehner* (WIPO Case No. D2001-1447), which observed that it is appropriate to consider the circumstances of each case before deciding whether to admit unsolicited additional submissions, but respectfully disagrees with the panel in the aforementioned case that it is sufficient that the supplemental filings "do not address topics which the Complainant could have addressed in its Complaint". This should certainly be a *conditio sine qua non* for admissibility of unsolicited supplemental filings, but such filings

can still not be admitted if they do not contain information which, at first impression, is crucial to the decision of the pending case. Obviously, in such a case, the other party must be given a reasonable term to submit a response to the supplemental filing.

In this case, the Complainant did not assert that the supplemental filing in defense of the Respondent's Reverse Domain Name Hijacking allegation contains information that is essential for deciding this aspect of the case, nor did the Panel – after a first impression of the submission – consider the information to be essential.

The submission of the supplemental filings by the Complainant and the Respondent are therefore not admissible and shall not be taken into account.

The Panel is further 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

The Respondent acknowledged that the Domain Name is identical to the Trademarks. Therefore, the first element of paragraph 4(a) of the Policy is met.

The Complainant must show a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name, which the Respondent may rebut (e.g. Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455).

The dispute between the Complainant and the Respondent revolves around the question if the Trademarks may be used by “certified Stellar practitioners” for consultancy services based on the open-source “Stellar” concept, as well as increased tensions amongst persons involved in the open source project. In this respect, the Respondent claims that the Complainant only owns the Trademarks “on behalf of all future practitioners [...] It defends the trademark where necessary to safeguard the spirit and practice of open-source, and to prevent claims of ownership or exclusivity”. And the Respondent claims that its own use of the Domain Name is limited as a practitioner’s use and that he acquired the Domain Name with a director of the Complainant.

The UDRP proceedings are meant to provide a fast decision based on three elements as set forth in Paragraph 4(a) of the Policy, and they do not provide room for the Panel to perform investigations into the background of the Complainant’s and the Respondent’s relationship. The Panel must limit itself to the facts of the matter as they appear from the file. The affidavits submitted by the Respondent show Mr. Jenkinson’s involvement and minority co-ownership of the Complainant, and the fact that Complainant used to allow certified Stellar practitioners to use the Trademarks. However, the affidavits, as confirmed by the Response, also confirm an increased tension amongst directors and others in the Complainant and the “Stellar open-source movement”. It is clear that the Complainant owns the Trademarks, but unclear if the Respondent was formally authorized to register and use the Domain Name which is, as acknowledged, identical to the Trademarks. As the Respondent himself is and was not known under the Domain Name and in absence of clear evidence that he was licensed to use Trademarks and register the Domain Name, the Panel cannot establish that the Respondent has direct rights or legitimate interests in the Domain Name.

That being the case, the Respondent alternatively relies on the so-called Oki Data doctrine. According to this doctrine, which was first decided in WIPO Case No.D2001-0936 (Oki Data Americas, Inc. v. ASD, Inc.), a reseller or distributor can be making a bona fide offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements, which include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, and the site’s accurately and prominently disclosing the registrant’s relationship with the trademark holder. If these criteria are met, an unofficial reseller or distributor is also regarded to have legitimate interests in the Domain Name (e.g. Research in Motion Limited v. One Star Global LLC, WIPO Case No. D2009-0227).

In this case, the Panel is satisfied that the Respondent actually offered the Internet users information about the Stellar open-source concept as it claimed to be a “resource for Stellar users”, and it was further limited to the information about the Stellar concept. However, the Respondent’s website did not disclose its relationship with the Complainant. On the contrary, the Panel observes that the limited information provided suggests that the Respondent’s website under the Domain Name implied that it was the sole or major resource for Stellar users. Consequently, the Oki Data criteria were not met and the Panel finds that the

Complainant provided prima facie evidence of the Respondent lacking direct rights or legitimate interests in the Domain Name.

It is obvious that the Respondent was aware of the existence of the Trademarks when he registered the Domain Name. He claims that he registered the Domain Name with the knowledge of Mr. Jenkinson, who was a co-founder of the Stellar concept and at the time of registration an authorized director of the Complainant. He further claims that the other directors of the Complainant became aware of the Respondent having registered the Domain Name six months after registration at the latest. Pursuant to paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of a domain name in bad faith where the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service offered on the Respondent's website or location. In absence of permission or even knowledge of the Complainant, the Respondent registered the Domain Name for the purpose of creating a likelihood of confusion with the Trademarks and making Internet users believe that the website under the Domain Name is the sole or primary resource of the Stellar concept. The Panel finds this to both constitute registration of the Domain Name in bad faith, as well as use of the Domain Name in bad faith.

Accordingly, the Panel finds that all elements of paragraph 4(a) of the Policy are met, so that the claimed finding of Reverse Domain Name Hijacking is rejected.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STELLAR.ORG**: Transferred

PANELLISTS

Name	Alfred Meijboom
------	------------------------

DATE OF PANEL DECISION 2014-05-28

Publish the Decision
