Decision for dispute CAC-UDRP-102609

Case number	CAC-UDRP-102609
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Domain names	starstble.com, wwwstarstable.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Star Stable Entertainment AB

Complainant representative

Organization	SILKA Law AB

Respondent

Organization	Hush Whois Protection Ltd

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings the Panel which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant has submitted evidence that it owns the following trademark registrations:

STAR STABLE, United States Reg. No. 3814190 dated July 6, 2010,
STAR STABLE, United States Reg. No. 13204128 dated January 13, 2015
STAR STABLE and Design, United States Reg. No. 14171326 dated September 21, 2015

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded in 2011 and is a privately held company located in Sweden operating the online horse game STAR STABLE and the website www.starstable.com. Today, the game has over 6 million registered players from all over the world. Players explore the beautiful island of Jorvik on the back of their own horse. Every player rides, takes care of their own horse, embarks on quests, participates in competitions, and takes part in the epic story that unfolds in the world of Star Stable. A third-party social monitoring solution, automatically moderates and monitors all chat to ensure a safe environment.

Complainant is the owner of the registered trademark STAR STABLE as a word mark in numerous countries all over the world including in Europe and in the United States.

The disputed domain names <starstble.com> and <wwwstarstable.com> were registered on May 6, 2013 and July 22, 2013, respectively, and each resolve to websites displaying monetized links to such categories as “Star Stable”, “Horse Game Online”, “Star Rider”, and “Free Horse Jumping Games”. The websites also indicate that the domain names are available for sale

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 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 disputed 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 disputed 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 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. The disputed domain names are confusingly similar to a trademark or service mark in which the Complainant has rights

Complainant owns the STAR STABLE trademark and provides an online game involving the riding and care of horses. Complainant also hosts its main company website at <www.starstable.com>.

The disputed domain names are not technically identical to the trademark of the Complainant. However, one is a mis-spelling of the STAR STABLE trademark and the other contains the entirety of the STAR STABLE trademark and merely add the prefix “www”. The former constitutes a typical example of typo-squatting, that is, a deliberate and minor misspelling which is intended to mimic the kind of errors that Internet users commonly make when typing a term into a browser or search engine. In this case the differences between the <starstble.com> domain name and the Complainant's STAR STABLE trademark are very minor and easily overlooked. The omission of the second letter “a” from the trademark is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. JCDECAUX SA v. Casey Kolp, CAC Case No. 101713 ("This is a clear case of typosquatting giving rise to the [JCDECAAUX.COM] disputed domain name's confusing similarity with the Complainant's famous mark ‘JCDECAUX.’") As for the latter, it’s mere addition of the letters “www” fail to differentiate the domain name from the Complainant’s trademark as many website addresses, including the <www.starstable.com> URL used by the Complainant, contain such letters. Total Temperature Instrumentation, Inc. v. Name Redacted, WIPO Case D2017-1471 (“The addition of the prefix ‘www’ in the disputed domain name does not serve to dispel the confusing similarity of the disputed domain name to the Complainant's mark, and may exacerbate the association as [sic] the Complainant, given the Complainant's ‘www.instrumart.com’ website.”)

Finally, as it adds no meaning or context here, the extension “.com” will not be taken into consideration when examining the identity or similarity between the Complainant’s trademark and the disputed domain names. See, e.g., Bentley Motors

Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc., Case No. D2014-1919 (when considering the issue of confusing similarity, “it is well-established that the top-level domain name ‘.com’ may be disregarded for this purpose.“)

Therefore the Panel holds that the Complainant has satisfied paragraph 4(a)(i) of the Policy because the disputed domain names are each confusingly similar to the Complainant’s trademark.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain names

Paragraph 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate a respondent’s rights or legitimate interests in respect of a disputed domain name.

The Panel concludes, on the basis of the Complainant's undisputed contentions, that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The Respondent has not been authorized to use the Complainant's STAR STABLE trademark, either as a domain name or in any other way. Rather, the Respondent is using the disputed domain name to resolve to a parking page that contains pay-per-click links which, in turn, redirect Internet users to a variety of third-party websites that are not associated with the Complainant but which may be associated with its competitors. Therefore, this Panel concludes that the Respondent is using the disputed domain names to seek pay-per-click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead. Past decisions under the Policy have held that such use of confusingly similar domain names is not a bona fide offering of goods or services. See, e.g., Loro Piana S.p.A. v. Y. v. Oostendorp, CAC Case No. 101335 (use of a disputed domain name that copies the complainant's trademark to resolve to a pay-per-click website "cannot be considered a bona fide offering of goods or services....")

Further, as the Respondent has submitted no Reponse nor made any other submission in this case, there is no evidence before this Panel to suggest that the Respondent is commonly known by the disputed domain name or that it has any trademark rights associated with the name "Star Stable" under paragraph 4(c)(ii) of the Policy. Further, in the WHOIS records for the disputed domain names, the Registrant is listed as „Hush Whois Protection Ltd.“ and so this also provides no support for Respondent under paragraph 4(c)(ii).

Finally, it cannot be said that the Respondent has made a legitimate non-commercial or fair use of the disputed domain names without intent for commercial gain as set out in paragraph 4(c)(iii) of the Policy. It does not appear that the disputed domain names and their resulting pay-per-click parked websites are referring to the Complainant's trademark in any nominative or other classic fair use manner such as for the purpose of commentary, news reporting, grievance, education, or the like.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) and of the Policy and demonstrated that the Respondent has no rights or legitimate interests in the disputed domain names.

C. The disputed domain names were registered and are being used in bad faith

In order to prevail in a dispute, paragraph 4(a)(iii) of the Policy requires that a Complainant prove that the dispuetd domain name has both been registered and is being used in bad faith.

The Complainant states that it has operated its online game for a number of years prior to registration of the dispurted domain names and that its current reach is to over 6 million users. As such, its STAR STABLE trademark is distinctive and well-known. Prior panels have agreed. See, e.g., Star Stable Entertainment AB v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / DOMAIN MAY BE FOR SALE, CHECK AFTERNIC.COM Domain Admin, Whois Foundation, WIPO Case No. D2019-0448 (the STAR STABLE trademark is “intrinsically distinctive, and widely used.”) This fact, combined with the composition of the disputed domain names (a typographical variation of the Complainant’s trademark and use of the letters „www“ preceding the trademark), leads this Panel to the conclusion that the Respondent registered the disputed domain names with knowledge of the Complainant's trademark. It has been held in prior decisions that such activity can form the

basis upon which to build a finding of bad faith domain name registration. 7-Eleven, Inc. v. charles rasputin, FORUM Claim No. FA 1829082 (in relation to the domain name 7elevendelivered.com and others, „Respondent had actual knowledge of Complainant's rights in the 7 ELEVEN mark at the time of registering the infringing domain names. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name can evince bad faith under Policy ¶ 4(a)(iii).")

As for use, the Complainant has submitted evidence that the disputed domain names resolve to parking pages with pay-per-click links to the Complainant as well as to various third-party companies who have no relationship to the Complainant and, in some cases, may be its competitors in the field of online games. Such activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. Arla Foods Amba v. I S / ICS INC, CAC Case No. 101764 (bad faith is found in a case where "the Disputed domain name is pointing to a pay-per click website using advertisements and is not used with real content.") The Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain names have been used in bad faith as they create a likelihood of confusion with the STAR STABLE trademark and resolve to websites for the commercial gain of either the Respondent or of those entities to whom the pay-per-click links resolve. In Focus Do It All Group v. Athanasios Sermbizis, WIPO Case No. D2000-0923 the Panel found that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial."

Finally, it is noted that the Respondent uses a WHOIS privacy shield to hide its identity. Although use of a privacy or proxy registration service is not in itself an indication of bad faith, the manner in which such service is used can in certain circumstances constitute a factor indicating bad faith. Beijing Qunar Information Technology Co., Ltd. v. Premium Registration Service / Zheng ZhongXing, WIPO Case No. D2013-0281 ("the fact that the disputed domain name was registered anonymously and protected by Premium Registration Service is consistent with bad faith in this Panel's view"). In light of the fact presented in this case, Respondent's shielding of its identity suggests that its motive has been to increase the difficulty for the Complainant of identifying the Respondent and this further supports a finding of bad faith registration and use of the disputed domain names.

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain names have been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STARSTBLE.COM**: Transferred
2. **WWWSTARSTABLE.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2019-10-01

Publish the Decision