

Decision for dispute CAC-UDRP-102804

Case number	CAC-UDRP-102804
-------------	------------------------

Time of filing	2019-12-06 15:20:22
----------------	----------------------------

Domain names	newstarstablehack.top, starstablehackedpro.top, starstablehackworld.top, starstablestarcoinshack.top, premiumstarstablehack.top
--------------	----------------------------------------------------------------------------------------------------------------------------------------

Case administrator

Name	Šárka Glasslová (Case admin)
------	-------------------------------------

Complainant

Organization	Star Stable Entertainment AB
--------------	-------------------------------------

Complainant representative

Organization	SILKA Law AB
--------------	---------------------

Respondent

Name	Sarunas Kulajis
------	------------------------

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark 'STAR STABLE', registered as follows:

- US trademark registration no. 3814190 'STAR STABLE', granted on July 6, 2010 in class 9;
- US trademark registration no. 013204128 'STAR STABLE', granted on January 13, 2015, in classes 16, 25, 28 and 41;
- US trademark registration no. 014171326 for the stylized mark, granted on September 21, 2015, in classes 9, 16 and 41;
- EU trademark registration no. 008696775 'STAR STABLE', granted on April 5, 2010, in class 9;
- EU trademark registration no. 013204128 'STAR STABLE', granted on January 13, 2015, in classes 16, 25, 28 and 41;
- EU trademark registration no. 014171326 for the stylized mark, granted on September 21, 2015 in classes 9, 16, 25 and 41;

- EU trademark registration no. 014673198 'STAR STABLE', granted on March 24, 2016 in classes 21, 24, 30 and 32.

In addition to the registered trademarks, the Complainant is also the owner of the following domain names bearing the words 'STAR STABLE' in the following top-level domains:

- STARSTABLE.COM, created in 2007;
- STARSTABLE.ORG, created in 2012.

All of the above domains are connected to the Complainant's official website.

FACTUAL BACKGROUND

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

The Complainant is a private company; founded in 2010 and located in Sweden. It is the operator of the online horse game starstable.com in which players explore a virtual island named 'Jorvik' on horseback, participate in quests and competitions and care for their horse.

The Complainant has over 6 million registered users, 98 percent of whom are girls.

The Complainant uses 'Crisp Thinking', a third-party social monitoring solution, to monitor chat on the game and ensure a safe environment for their players. The Complainant has submitted evidence by way of screenshots of their social media accounts, which have significant presence (67,500 followers on Instagram for instance).

On August 21, 2019, the Respondent registered the disputed domain names <NEWSTARSTABLEHACK.TOP>, <STARSTABLEHACKEDPRO.TOP>, <STARSTABLEHACKWORLD.TOP>, <STARSTABLESTARCOINSHACK.TOP> and <PREMIUMSTARSTABLEHACK.TOP>.

On these websites, Star Stable players are invited to use the Respondent's software to hack and circumvent the rules of the game by use of a hack tool. Each website contains a link to the hack tool which is a separate website in which players can access free Star Coins. The appearance of this linked website is similar to the Complainant's website and includes the Complainant's logo, therefore it could be perceived to be the Complainant's official website.

The Respondent's hack tool can obtain unlimited Star Coins if the player submits their Star Stable login information. The websites also allegedly contain third-party advertisements.

The Complainant contacted the Respondent on October 10, 2019, through a cease and desist letter. The Respondent did not respond to this communication.

PARTIES CONTENTIONS

No administratively compliant response has been filed by the Respondent.

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. Introduction

This is a Mandatory Administrative Proceeding under paragraph 4 of the Uniform Domain Name Dispute Policy (Policy or UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN), and the Procedural Rules for Uniform Domain Dispute Resolution (Rules) including the Czech Arbitration Centre (CAC) UDRP Supplementary Rules.

B. Administrative Deficiencies

By notification dated December 6, 2019 and in accordance with Paragraph 4(d) of the Rules, the CAC notified the Complainant that it was administratively deficient in that it had not sufficiently identified the Respondent.

The CAC directed the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder.

The CAC requested the Complainant correct the administrative deficiency and submit an Amended Complainant.

On December 6, 2019, the Complainant filed an Amended Complaint and the CAC determined that the Complaint could proceed by way of Administrative Proceeding.

The Panel considers that the administrative deficiency has now been corrected and this matter can proceed to be considered by the Panel in accordance with the Policy and the Rules.

C. Substantive Matters

The Complainant has filed a complaint with supporting evidence disputing the registration of the domain names <NEWSTARSTABLEHACK.TOP>, <STARSTABLEHACKEDPRO.TOP>, <STARSTABLEHACKWORLD.TOP>, <STARSTABLESTARCOINSHACK.TOP> and <PREMIUMSTARSTABLEHACK.TOP> (the disputed domain names) by the Respondent.

The disputed domain names were each registered on 21 August 2019.

The Respondent has not filed any administratively compliant response or any materials in response to the Complaint by the deadline set out under the Rules.

Paragraph 15(a) of the Rules provides:

A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Accordingly, the Complainant carries the onus to prove its case.

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no right 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.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

Taking each of these elements in turn:

Paragraph 4(a)(i) - RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

To prove this element, the Complainant must have trademark rights and the disputed domain names must be identical or confusingly similar to the Complainant's trademarks.

The Complainant has adduced evidence that it is the owner of the relevant trademarks and domain names set out in the Identification of Rights section above.

The Panel notes that the Complainant's trademarks and domain names predate the registration of the disputed domain names.

The Complainant contends that the disputed domain names are identical or at least confusingly similar to the Complainant's trademarks as the disputed domain names. <NEWSTARSTABLEHACK.TOP>, <STARSTABLEHACKEDPRO.TOP>, <STARSTABLEHACKWORLD.TOP>, <STARSTABLESTARCOINSHACK.TOP> and <PREMIUMSTARSTABLEHACK.TOP> each exactly reproduces the Complainant's well-known trademark 'STAR STABLE', with the mere addition of words such as 'NEW', 'HACK' and 'PREMIUM'.

The Complainant contends that the addition of these terms does not distinguish the domain names from the Complainant's STAR STABLE trademark. The Panel notes that these mere additions do not alter the underlying meaning of a domain name and therefore accept the Complainant's contention.

The Panel also considers that when a domain name wholly incorporates a complainant's registered trademark, it is sufficient to establish identity or confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0902; *Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin*, WIPO Case No. D2003-003-0888.

Additionally, the Panel considers the suffix '.top' to be irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for functionality of a website.

On the evidence adduced by the Complainant as to the extensive use of its trademarks, the Complainant enjoys a high degree of reputation worldwide as the operator of the online horse game.

Although no evidence of actual confusion has been provided by the Complainant, the Panel, having reviewed the evidence of reputation in support of the Complainant's case, is satisfied that the disputed domain names are likely to cause confusion amongst Internet users given the nature and wide use of the Complainant's trademarks in the classes of goods or services in which they are registered.

Accordingly, the Panel finds that each of the disputed domain names <NEWSTARSTABLEHACK.TOP>, <STARSTABLEHACKEDPRO.TOP>, <STARSTABLEHACKWORLD.TOP>, <STARSTABLESTARCOINSHACK.TOP> and <PREMIUMSTARSTABLEHACK.TOP> is identical or confusingly similar to the Complainant's trademarks and that paragraph 4(a)(i) of the Policy is satisfied.

Paragraph 4(a)(ii) - NO RIGHTS OR LEGITIMATE INTERESTS

The burden of proof is on the Complainant to establish that the Respondent lacks rights or legitimate interests in the disputed domain name.

Under the Policy, if a prima facie case is established by the Complainant, then the burden of production of evidence shifts to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. See Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d. d. v. Modern Empire Internet Ltd, WIPO Case No. D2003-0455; Audi AG v. Dr. Alireza Fahimipour, WIPO Case No. DIR2006-0003.

The Complainant advances two contentions in support of this ground:

(a) The Complainant has not granted the Respondent any authorization or licence to use its trademark 'STAR STABLE' and has no affiliation with the Respondent.

(b) The Respondent is not making a legitimate non-commercial or fair use of the disputed domain names and is not commonly known under the disputed domain names. The Complainant contends the use of the domain names is by nature illegitimate, as the websites aim to hack the Complainant's online game. As the Respondent has failed to submit any administratively compliant response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, the Panel accepts the Complainant's contention here.

Accordingly, the Panel draws an adverse inference from the Respondent's failure to respond, in accordance with paragraph 14(b) of the Rules. The Panel, however, notes that in doing so, it is not making any judgment about the legitimacy or otherwise of the Respondent's business model aimed to hack the Complainant's online game in order to provide free access to Star coins.

The Panel accepts that the Complainant did not grant the Respondent any authorization or licence to use the Complainant's trademark in the disputed domain names.

Accordingly, any use by the Respondent of the disputed domain names that incorporate the trademark 'STAR STABLE' is not authorized and therefore likely to be an infringement of the Complainant's legal rights.

The Panel accepts, on its face, the Complainant's contention that the Respondent is not commonly known by the disputed domain names.

The Complainant contends that the disputed domain names have not been used by the Respondent in connection with a bona fide offering of goods or services. The Complainant has cited a case in which they were previously involved with similar facts. See WIPO Case No. D2015-2312, Star Stable Entertainment AB v. WhoisGuard Protected/ WhoisGuard, Inc. This Panel concurs with the Panel in the aforementioned case, in that the use of the domain names 'does not amount to a bona fide offering of goods or services'. Further, similarly to the aforementioned case, the use of the domain names is intended to mislead game players, who may mistake the websites to be those of the Complainant.

The Panel considers that it cannot be established that the disputed domain names are for use in a fair or legitimate noncommercial manner, as the disputed domain names not only pertain to the business, products or services created by the Complainant, but to the cheating of the Complainant's online game. Further, the alleged use of third-party advertisements indicates that the websites are of a commercial nature.

By the lack of any administratively compliant response from the Respondent, or any other information indicating the contrary, the Panel finds that the Respondent has no rights or legitimate interests in respect of <NEWSTARSTABLEHACK.TOP>, <STARSTABLEHACKEDPRO.TOP>, <STARSTABLEHACKWORLD.TOP>, <STARSTABLESTARCOINSHACK.TOP> and <PREMIUMSTARSTABLEHACK.TOP> and that paragraph 4(a)(ii) of the Policy is satisfied.

Paragraph 4(a)(iii) - BAD FAITH

For the purposes of paragraph 4(a)(iii), paragraph 4(b) of the Policy states that any of the following circumstances shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The Complainant advances three contentions in support of this ground:

- (a) The Respondent's failure to respond to the Complainant's cease and desist letter demonstrates bad faith.
- (b) The disputed domain names are being registered in bad faith.
- (c) The disputed domain names are being used in bad faith.

Failure to respond to the cease and desist letter has been seen to constitute bad faith. See *News Group Newspapers Limited and News Network Limited v. Momm Amed Ia*, WIPO Case No. D2000- 1623; *Nike, Inc. v. Azumano Travel*, WIPO Case No. D2000-1598; and *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. D2000-1460. The failure to respond to the letter suggests to the Panel that the Respondent was aware that it has no rights or legitimate interests in the domain names, and that the domain names have been registered and are being used in bad faith.

The Complainant contends that the manner in which the Respondent utilized the privacy registration service indicates bad faith. The Panel is satisfied that the use of 'PrivacyGuardian.org' does not reflect good faith but rather an attempt to increase the difficulty for the Complainant of identifying the Respondent. See *Oculus VR, LLC v. PrivacyGuardian.org / Vildan Erdogan*, WIPO Case No. D2018-0464.

Additionally, upon the evidence adduced by the Complainant, the Panel is also satisfied that the disputed domain names are being used in bad faith.

The Respondent's use of third-party advertisements would clearly indicate that the Respondent utilizes the disputed domain names for commercial gain, satisfying paragraph 4(b)(iv). However, the Panel notes that no indication of third-party advertisements can be adduced from the evidence submitted by the Complainant.

Further, the Complainant contends that the purpose of the websites is to disrupt the Complainant's business and income. The Respondent's websites contain a hacking tool that provides players with unlimited 'Star Coins', credit for players which is a source of income for the Complainant. In order to satisfy paragraph 4(b)(iii) of the Policy, upon which the Complainant contends bad faith, the Complainant and the Respondent must be 'competitor(s)'. The Panel considers that the Complainant and the Respondent could be classified as 'competitors' under a broad definition of 'competitor', as they both compete for the same audience in the distribution of Star Coins to utilize in the Star Stable online game.

The disputed domain names each contain the addition of the word 'HACK' alongside 'STAR STABLE' and purport to allow players to access free Star Coins. As the Complainant has contended, the nature of hacking is in itself evidence of bad faith. Therefore, the Panel is satisfied that the disputed domain names are being used in bad faith.

Accordingly and in all the circumstances by reference to the evidence submitted by the Complainant and the inferences to be drawn from the Respondent's failure to submit an administratively compliant response, the Panel considers that the registration and use of the disputed domain names were in bad faith, and paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NEWSTARSTABLEHACK.TOP**: Transferred
2. **STARSTABLEHACKEDPRO.TOP**: Transferred
3. **STARSTABLEHACKWORLD.TOP**: Transferred
4. **STARSTABLESTARCOINSHACK.TOP**: Transferred
5. **PREMIUMSTARSTABLEHACK.TOP**: Transferred

PANELLISTS

Name	Professor William Lye, OAM QC
------	-------------------------------

DATE OF PANEL DECISION	2020-01-13
------------------------	------------

Publish the Decision
