Decision for dispute CAC-UDRP-102967

Case number	CAC-UDRP-102967
Time of filing	2020-03-13 10:39:24
Domain names	starstablehacktool.top , starstablehacktool.xyz

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Star Stable Entertainment AB

Complainant representative

Organization	SILKA Law AB

Respondent

Organization	Bachribochta

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks. In particular, Star Stable Entertainment AB owns:

(i) EUTM No. 8696775 STAR STABLE registered on April 5, 2010 for class 9 and duly renewed.

(ii) EUTM No. 13204128 STAR STABLE registered on January 13, 2015 for classes 16, 25, 28 and 41.

(iii) EUTM No. 14171326 STAR STABLE (dev.) registered on September 21, 2015 for classes 9, 16, 25 and 41.

(iv) US Trademark No. 3814190 STAR STABLE registered on July 6, 2010 for class 9 and duly renewed.

(v) US Trademark No. 4798274 STAR STABLE registered on August 25, 2015 for classes 16, 25, 28 and 41.

(vi) US Trademark No. 4944619 STAR STABLE (dev.) registered on April 26, 2016 for classes 9, 16 and 41.

FACTUAL BACKGROUND

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FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant, founded in 2011, is a privately held company located in Sweden operating an online horse game under the name STAR STABLE at the website www.starstable.com. The Complainant informs that it firstly offered the game only in Swedish, but later extended it, with offerings now in 11 languages, with active users in 180 countries.

According with the information made available by the Complainant, the game has 6 million registered users, the majority of them girls. In addition, the Complainant informs that it has a significant presence on various well-known social media platforms, such as Facebook, Youtube, Instagram, Google+, and Twitter.

The Complainant is the owner of numerous trademark registrations for STAR STABLE, in particular said trademark appears to be protected in European Union and in the United States of America.

Furthermore, the Complainant also owns a number of domain names containing the wording STAR STABLE such as <starstable.com> registered in 2007 and <starstable.org> registered on 2012 while the Respondent registered both the disputed domain names <starstablehacktool.top> and <starstablehacktool.xyz> on December 5, 2019.

The Complainant contends that the disputed domain names are confusingly similar to the Complainant’s STAR STABLE mark since the disputed domain names wholly incorporates the mark, simply adding to it the terms "hack" and "tool" which do not distinguish the domain names from the Complainant's STAR STABLE trademark. The Complainant also submits that the generic Top-Level Domain (“gTLD”) suffixes (.top and .xyz) are to be totally disregarded for the purpose of comparing the disputed domain names with the older trademark.

In addition, the Complainant believes that the Respondent has no rights or legitimate interests in respect of the disputed domain names since the Complainant has never granted the Respondent any authorization, consent, right or license to use the trademark STAR STABLE within the disputed domain names and due to the fact that the Respondent is not affiliated with the Complainant in any way. The Complainant also assumes that the Respondent is not commonly known by the name STAR STABLE.

The Complainant notes that the Respondent has associated the disputed domain name <starstablehacktool.top> with a website in which players are invited to use the Respondent's software to hack and circumvent the game by use of a hack tool. According to the Complainant's view, the website intends to collect users´ personal data and to encourage players to obtain coins from the game unlawfully. With reference to the disputed domain name <starstablehacktool.xyz> the Complainant observes that it is linked to a pay per click webpage which shows links to third party websites. It is also outlined by the Complainant that the Respondent has been using privacy shield to conceal its identity. In consideration of the above, it is the Complainant's view that the domain names in dispute were registered with full knowledge of the Complainant's trademark STAR STABLE and that they are used for disrupting Complainant's business by hacking its game and depriving Complainant of its income and for commercial gain by showing third-party advertisements. The Complainant therefore concludes that Respondent should be considered to have registered and to be using the disputed domain names 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 names are 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 names (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 names have been registered and are 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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights 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.

1) The disputed domain names consist of the Complainant's STAR STABLE mark in its entirety, followed by the words "hack" and "tool" and the generic Top-Level Domain ("gTLD") respectively ".top" and ".xyz". The words "hack" and "tool" were already find descriptive by previous panels (see for instance Star Stable Entertainment AB vs. Sarunas Kujalis, CAC Case No. 102721 and Red Bull GmbH vs. Akiyoshi Fukumitsu, WIPO Case No. D2012-1209). It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to that trademark for purposes of the Policy despite the addition of descriptive terms (see for instance LEGO Juris A/S vs. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico, WIPO Case No. D2019-2834, Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) vs. Bingo-Bongo, WIPO Case No. D2011-0795 and Hoffmann-La Roche, Inc. vs. Wei-Chun Hsia, WIPO Case No. D2008-0923). Finally, the Panel notes that the consensus view in previous UDRP Panel decisions is that in determining confusing similarity under paragraph 4(a) of the Policy, the generic Top-Level Domain ("gTLD") suffix (".top" and ".xyz" in this particular instance) should be disregarded. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

2) The Complainant has long standing rights in the mark STAR STABLE. The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain names as it is not commonly known under the disputed domain names and as the Respondent was never authorized or licensed or otherwise permitted by the Complainant to use the disputed domain names. The Respondent, in the absence of any response, has not shown any facts or elements to justify legitimate rights or interests in the disputed domain names. Therefore, on the basis of the evidences submitted and in the absence of a response the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

3.1) <starstablehacktool.top>

Given the reputation of the Complainant's trademark STAR STABLE as supported by the Complainant's evidence and the use of the disputed domain name made by the Respondent, the Panel must conclude that the Respondent was fully aware of the

Complainant's trademark at the time of registering <starstablehacktool.top>. Furthermore, the Complainant attached a screenshot as an annex to the Complaint that displayed the Respondent's hacking website. The site clearly replicates the look of the Complainant's official website and even the trademark STAR STABLE is clearly visible in the website with the same graphic features of the Complainant's mark. In the website associated to <starstablehacktool.top> players are invited to use the Respondent's software to hack and circumvent the Complainant's STAR STABLE game by use of an hack tool. In particular, according to the Complainant, the website intends to collect users´ personal data and to encourage players to obtain coins from the game unlawfully. The Respondent's bad faith is particularly evident in consideration of the hacking website mechanism. In particular, according to the Complainant's reconstruction, by submitting their personal data on the website, players may obtain in-game currency which otherwise need to be bought through Complainant's official website. It is the Panel's view that the use of the disputed domain name in connection with such a hacking website is disruptive to Complainant's business and demonstrates Respondent's bad faith (see Star Stable Entertainment AB vs. Domain Administrator, See PrivacyGuardian.org / Lili Cai, WIPO Case No. D2018-0260 and Supercell Oy vs. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Serenity LLC, WIPO Case No. D2016-1774). Finally, the Panel also considers the Respondent's registration through a privacy shield. In this perspective, the Panel's view, according to previous Panels, is that the use of a privacy shield, once connected with additional elements, clearly points towards a registration and use in bad faith (see Groupe Auchan vs. Parapharmacie Marche, Xavier Marche, WIPO Case No. D2014-0925 and Trednet, Direct Distribution International Ltd ("DDI") vs. WhoisGuard namecheap / BODYPOWER, WIPO Case No. D2012-2001). In the light of the above, the Panel considers that also the third and final element necessary for finding that the Respondent has engaged in abusive domain name registration and use has been established. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

3.2) <starstablehacktool.xyz>

Given the reputation of the Complainant's trademark STAR STABLE as supported by the Complainant's evidence and the use of the disputed domain name made by the Respondent, the Panel must conclude that the Respondent was fully aware of the Complainant's trademark at the time of registering <starstablehacktool.xyz>. Furthermore, the Complainant attached a screenshot as an annex to the Complaint that displayed a pay per click webpage which shows link to third party websites In the Panel's view, the above represents an action taken by the Respondent to intentionally attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's STAR STABLE mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. Previous Panels have held that using the domain name as a parking page with links to third party websites may be evidence of bad faith when the registrant is using the domain name in this manner because of the similarity with the Complainant's trademark in the hope and expectation that the similarity will lead to confusion on the part of Internet users and results in an increased number of Internet users being drawn to that domain name parking page (MpireCorporation vs. Michael Frey, WIPO Case No. D2009-0258; Paris Hilton vs. Deepak Kumar, WIPO Case No. D2010-1364 and La Fee vs. Pavol Icik, WIPO Case No. D2013-0526). Therefore in the Panel's view the Respondent's use of the domain name in dispute, which incorporates the Complainant's trademark, in connection with an Internet web page that merely lists links to third party web sites is not a bona fide offering of services and is not a legitimate non-commercial or fair use of the domain name at issue. Finally, the Panel also considers the Respondent's registration through a privacy shield. In this perspective, the Panel's view, according to previous Panels, is that the use of a privacy shield, once connected with additional elements, clearly points towards a registration and use in bad faith (see Groupe Auchan vs. Parapharmacie Marche, Xavier Marche, WIPO Case No. D2014-0925 and Trednet, Direct Distribution International Ltd ("DDI") vs. WhoisGuard namecheap / BODYPOWER, WIPO Case No. D2012-2001). In the light of the above, the Panel considers that also the third and final element necessary for finding that the Respondent has engaged in abusive domain name registration and use has been established. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STARSTABLEHACKTOOL.TOP** : Transferred
2. **STARSTABLEHACKTOOL.XYZ**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2020-04-22

Publish the Decision