Decision for dispute CAC-UDRP-103328

Case number	CAC-UDRP-103328
Time of filing	2020-10-05 09:43:43
Domain names	starstablestat.info

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Star Stable Entertainment AB

Complainant representative

Organization	SILKA AB

Respondent

Name	Aleksandr Briller

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registrations of the trademark STAR STABLE (the “STAR STABLE trademark”):

- the European Union trademark STAR STABLE with registration No. 008696775, registered on 5 April 2010 for goods in International Class 9;

- the United States trademark STAR STABLE with registration No.3814190, registered on 6 July 2010 for goods and services in International Classes 9, 21, 23, 26, 36 and 38; and

- the United States trademark STAR STABLE with registration No.13204128, registered on 13 January 2015 for goods and services in International Classes 16, 25, 28 and 41.

FACTUAL BACKGROUND

The Complainant was founded in 2011. It is a privately held company located in Sweden that offers an online horse game. The game has over 6 million registered users in 180 countries and is available in 11 languages.

The Complainant is the owner of the domain names <starstable.com>, <starstable.org>, and <starstable.ru>. It uses them to inform potential customers about its STAR STABLE trademark, games and merchandise.

The Respondent registered the disputed domain name on 23 June 2020. At the time of filing of the Complaint, it redirects to a website offering an online war game.

The Complainant notes that on 20 March 2020 it sent to the Respondent a cease and desist letter, asking for the voluntary transfer of the disputed domain name, but the Respondent did not comply with the request.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is identical or confusingly similar to the Complainant's STAR STABLE trademark, which it incorporates in full, and the addition of the word "stat" does not distinguish the disputed domain name from the trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no authorization from the Complainant to register a domain name incorporating the Complainant's trademark, and it is not affiliated with the Complainant. The Respondent is not commonly known by the name "Star Stable" and has no rights in this name. The Complainant points out that there is no bona fide offering of goods or services, as the Respondent is using the disputed domain name to attract visitors and redirect them to an online war game.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant submits that STAR STABLE is a well-known trademark in the online video game industry, and the Respondent, being in the same industry, has registered the disputed domain name with knowledge of the Complainant's trademark aiming to disrupt the Complainant's business by confusing and attracting customers to the disputed domain name and redirecting them to the Respondent's own website offering a different online game for commercial gain.

RESPONDENT:

The Respondent submits that it registered the disputed domain name for technical purposes - to get statistics on clicks on the website advertised by the Respondent. It explains that the disputed domain name has nothing to do with a game about horses, and it was chosen because of the dictionary meaning of the words included in it: "star", "stable", and "stat" meaning "statistics". The Respondent notes that he is not a native English speaker and for him the word "stable" means "able to continue in a regular and successful way without unexpected changes". The Respondent notes that the disputed domain name was not advertised anywhere and was used only for the indicated technical purpose, with no direct or indirect benefit derived from this use. The Respondent points out that the themes of the Complainant's and of the Respondent's websites and their target audiences are completely different, which according to the Respondent makes the Complainant's claim for potential commercial gain highly questionable.

The Respondent notes that the Registrar did not notify him about the situation and the Complainant's wish to settle the conflict out of court. The Respondent submits that in order to resolve the conflict situation and exclude the suspicions of the Complainant, he deleted all data from the disputed domain name and states that he is ready to undertake not to use it in the future.

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

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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.

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant request that the language of the proceeding be English, and points out that the disputed domain name contains English language words and redirects to a third-party website, which targets an international English-speaking audience.

The Respondent objects to the Complainant's request on the language of the proceeding and states that it does not understand the Complaint, but has submitted a Response in English in which it addresses the arguments of the Complainant.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and is satisfied that using the English language in this proceeding would be fair and efficient. Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the 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 domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the STAR STABLE trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".info" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "starstablestat". It consists of the elements "star", "stable" and "stat". The combination of the first two elements "star" and "stable" is identical to the STAR STABLE trademark, while "stat" is a contracted version of the descriptive word "statistics" which has a low effect on the overall impression made by the disputed domain name, in which the "starstable" sequence dominates. As discussed in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the STAR STABLE trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent has no permission to use the STAR STABLE trademark and is not commonly known under the disputed domain name. The Complainant also points out that the disputed domain name is connected to a website that offers an online game for commercial gain. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent submits that it has chosen the disputed domain name because of the dictionary words of which it is composed, and that he uses it to measure the traffic to its online game website.

The disputed domain name is confusingly similar to the STAR STABLE trademark and incorporates it with the addition of an abbreviated form of a dictionary word of no distinctiveness. As the STAR STABLE trademark is easily distinguishable and dominates in it, it may lead Internet users to believe that the Respondent's website is affiliated to the Complainant. The Respondent's argument that it was chosen because of the dictionary meaning of the words composing it is not convincing, because it has no connection to the nature of the Respondent's website and does not explain what the combination means and why it was needed by the Respondent. The evidence submitted by the Complainant and not disputed by the Respondent shows that the disputed domain name is indeed associated to an online war game website, and as long as the Complainant is also offering an online game, this supports a conclusion that the Parties are operating in the same market. As stated by the Respondent, the disputed domain name is used to measure the traffic to its website. The Panel understands this as essentially an admission that it was intended to attract such traffic, as otherwise there will be nothing to measure.

All the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's STAR STABLE trademark, has registered and used the disputed domain name in an attempt to

exploit this trademark's goodwill to mislead and attract Internet users and redirect them to the online game offered by the Respondent for financial gain. In the Panel's view, such activity is not legitimate and does not give rise to rights and legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The disputed domain name is confusingly similar to the STAR STABLE trademark and incorporates it with the addition of a dictionary word of no distinctiveness. As the STAR STABLE trademark is easily distinguishable and dominates in it, it may lead Internet users to believe that the Respondent's website is affiliated to the Complainant.

As submitted by the Complainant and not denied by the Respondent, the disputed domain name is indeed associated to an online war game, which shows that the Parties are operating in the same market. The Respondent has offered an unconvincing explanation of its choice of domain name and has essentially admitted that it was intended to attract traffic.

The Respondent's statement that he was not informed by the Registrar of the Complainant's attempt to amicably solve the matter is also not convincing, as the evidence in the case file shows that the Complainant sent its cease and desist letter directly to the Respondent at the e-mail address specified by the Respondent to the Registrar for the purposes of the registration of the disputed domain name.

Taking all the above into account, the Panel accepts that as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the STAR STABLE trademark in an attempt for commercial gain to attract traffic to the disputed domain name by creating a false impression in Internet users that the Respondent's website and the online game offered on it are affiliated to the Complainant.

This satisfies the Panel that the Complainant has established that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STARSTABLESTAT.INFO**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2020-11-10

Publish the Decision