

Decision for dispute CAC-UDRP-104012

Case number CAC-UDRP-104012

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Domain names starstable.news

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Star Stable Entertainment AB

Complainant representative

Organization SILKA AB

Respondent

Name Gabriella Garlo

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

In this proceeding the Complainant relies on the following trademarks:

- STAR STABLE (word), EU trademark registration No. 008696775, registered on April 5, 2010;
 - STAR STABLE (word), US trademark registration No. 3814190, registered on July 6, 2010;
 - STAR STABLE (word), US trademark registration No. 13204128, registered on January 13, 2015; and
 - STAR STABLE (figurative), US trademark registration No. 14171326, registered September 21, 2015.
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FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

Founded in 2011 in Stockholm, Sweden, the Complainant is the maker of the popular adventure game Star Stable Online and

according to the Complainant it is the fastest-growing horse game in the world.

Over the years the Complainant has extended its product line to music, publishing and several apps.

The Complainant states it has a significant presence on various social media platforms, such as "Facebook", "Youtube", "Instagram", "Google+" and "Twitter".

The Complainant is the owner of the registered "STAR STABLE" trademarks in numerous of countries including the EU and the United States.

The disputed domain name was registered on June 1, 2021 and incorporates in full the Complainant's registered trademark "STAR STABLE" coupled with the generic gTLD "news".

The generic Top-Level Domain (gTLD) ".news" is typically disregarded under the first element, as it a standard requirement for registration and does not negate a finding of similarity between the Complainant's trademark and the disputed domain name.

Therefore, the disputed domain name is confusingly similar to the Complainant's trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that there is no bona fide offering of goods or services in this case, nor is the Respondent known by the name "Star Stable".

The identity in the whois record is hidden under a privacy shield. The Complainant argues that should the Respondent have any legitimate interest in the disputed domain name, she would most likely not have chosen to register it anonymously. The Whois privacy service hides the identity of the person behind an infringing website and makes it more challenging for brands to enforce their trademarks.

The disputed domain name resolves to a parked page which shows links to third party websites depending on where the site is accessed from.

These links capitalize on the reputation and goodwill of the Complainant and its trademark.

The Complainant adds that the Respondent's name doesn't correspond with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the term "Star Stable".

The Respondent's name is Gabriella Garlo and she is in Brazil.

Searches have shown that Gabriella Garlo has been involved in numerous UDRP proceedings and as such, the Respondent has a historical behavior of abusive registrations which does not constitute fair use of the disputed domain name.

Thus, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant claims the Respondent uses a privacy shield and 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.

The Complainant emphasizes the fact that it also suggests that a motive for using a domain privacy service in this instance has been to increase the difficulty for the Complainant of identifying the Respondent, which does not reflect good faith.

The Complainant sent a cease-and-desist letter to the Respondent and requested to cease the use of the disputed domain name.

The Respondent failed to respond to the letter and that also indicated Respondent's bad faith.

The Complainant contends that "STAR STABLE" is a well-known trademark in the online video game industry.

It is highly unlikely that the Respondent was not aware of the rights Complainant has in the trademark and the value of said trademark, at the point of the registration of the disputed domain name. There is no way in which the disputed domain name could be used legitimately.

Thus, the Complainant asserts that the Respondent has registered and is using the disputed domain name 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 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. Identical or confusingly similar with Complainant's trademark

The Complainant owns "STAR STABLE" trademark registrations effective in various jurisdictions, including the US and the EU.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name fully incorporates the Complainant's "STAR STABLE" word trademark.

As stated in WIPO Overview 3.0 "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing" (see par. 1.7).

In the present case, the Complainant's word trademark is included in the disputed domain name in its entirety without any additions or alterations.

The Panel finds the disputed domain name identical with the Complainant's word trademarks and confusingly similar with its figurative mark with the word element "Star Stable".

The gTLD suffix ".news" is to be disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110 and CAC Case No. 101284.

The disputed domain name was registered on June 01, 2021 and resolves to a parked page with commercial links.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and *Vertical Solutions Management, Inc. v. webnet-marketing, inc.*, FA 95095, National Arbitration Forum).

The Complainant has made a prima facie case in respect of Respondent's lack of rights or legitimate interests, in particular absence of authorization from the Complainant to use its trademarks in the disputed domain name, the fact that the Respondent is not known by the disputed domain name, absence of bona fide offering of goods and/or services by the Respondent as well as the fact that the Respondent was involved in many UDRP proceedings.

The disputed domain name is used for a parked page with commercial links and previous panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use (see e.g. CAC Case No. 103873, CAC Case No.103794, CAC Case No.102609 and WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*).

As provided in WIPO Overview 3.0: "Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users" (see par 2.9).

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name.
However, this is not the case here.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith. These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

The disputed domain name is used for a parked page with PPC links.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO Overview 3.0). Targeting by the respondent is important in establishing bad faith under UDRP.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4 of WIPO Overview 3.0).

The Panel finds the following factors indicate Respondent's bad faith in the present dispute:

- 1) The disputed domain name is identical with the Complainant's widely-known word mark and the disputed domain name was registered many years after the registration of the Complainant's trademarks.
- 2) The Complainant's "Star Stable" mark is widely-known in the industry of online games as proven by the Complainant and recognized by previous UDRP panels (see e.g. CAC Case No.103872 - "the Complainant has shown that STAR STABLE is a well-known trademark in the online video game industry", CAC Case No.102609 – "as such, its STAR STABLE trademark is distinctive and well-known" and Star Stable Entertainment AB v. Webmaster Administration, DCW Group Investments, WIPO Case No. D2019-0449 -"the Complainant's game Star Stable is well-known").
- 3) The Panel notes that the Respondent had been a party to many UDRP proceedings and registered domain names similar with third parties' trademarks (see e.g. CAC Case No. 103760, CAC Case No. 103737 and Vizio, Inc. v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Gabriella Garlo, WIPO Case No. D2021-2469 where the Panel noted: "the Respondent appears to be engaged in a pattern of abusive registration having registered multiple domain names comprising of other third parties' trade marks. The Panel finds this case is a continuation of that bad faith pattern").
- 4) Under these circumstances the Panel could not see any use of the disputed domain name by the Respondent that would be legitimate. Respondent's use of privacy shield is also an indication of bad faith taking into account all other circumstance and facts as well as the use of the disputed domain name for hosting pay-per-click links (see CAC Case No.102609 referring to other UDRP decisions).

All facts and circumstances of this dispute indicate Respondent's awareness of the Complainant and its trademarks and targeting by the Respondent.

The Panel finds that Respondents registration and use of the disputed domain name fall within the bad faith scenarios described in 4 b (ii) and 4 b (iv) of UDRP.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. STARSTABLE.NEWS: Transferred

PANELLISTS

Name	Igor Motsnyi / Mocni Konsalting doo
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DATE OF PANEL DECISION 2021-10-11

Publish the Decision
