

## Decision for dispute CAC-UDRP-105015

Case number **CAC-UDRP-105015**

Time of filing **2022-11-23 09:39:54**

Domain names **starstablepc.com**

### Case administrator

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

### Complainant

Organization **Star Stable Entertainment**

### Complainant representative

Organization **SILKA AB**

### Respondent

Name **Polyakov Andrey**

#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

#### IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of “a number of STAR STABLE-formative trademarks internationally,” including EU Reg. No. 8,696,775 for STAR STABLE (registered April 5, 2010) for use in connection with, *inter alia*, “electronic games”; and U.S. Reg. No. 3,814,190 for STAR STABLE (registered July 6, 2010) for use in connection with, *inter alia*, “interactive electronic game software and program” (the “STAR STABLE Trademark”).

#### FACTUAL BACKGROUND

Complainant states that it “has become internationally famous thanks to ‘Star Stable’, the #1 fastest-growing horse adventure game in the world”; that “Star Stable is a massively multiplayer online role-playing game (MMORPG) built especially for those with a passion for horses”; that it has “over 21 million registered users across 180 countries, and support in 14 languages”; that it “has an eclectic team of over 170 employees in 25 different countries around the globe”; and that it “announced last year that its revenue in 2020 reached USD44 million.”

The Disputed Domain Name was created on June 22, 2022, and is being used in connection with a website that uses the same stylized version of the STABLE Trademark and similar colors as on Complainant’s website and offers a link for “Star Stable Download.” According to a screenshot provided by Complainant, the website associated with the Disputed Domain Name states: “This website has been created by a group of Star Stable players who love the game”, and a footer states: “Our website is not an official representative or

the developer of this game.”

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#### PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the STAR STABLE Trademark because, inter alia, the Disputed Domain Name contains the STAR STABLE Trademark in its entirety and the addition of the term “pc” (a common abbreviation for “personal computer”) does not prevent a finding of confusing similarity.

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “Respondent is not a licensee of the Complainant, and it has not received any consent, permission, authorization or acquiescence from the Complainant to use its STAR STABLE mark in association with the registration of the Domain Name”; “Complainant has found nothing to suggest that the Respondent owns any identical or similar trademarks to the Domain Name or to the term ‘starstablepc’”; “[t]here is no evidence that the Respondent has been commonly known, by the Domain Name or by the term ‘starstablepc’”; and “Respondent is not making a legitimate noncommercial or fair use of the Domain Name.” Further, in apparent anticipation of a defense from Respondent that the website associated with the Disputed Domain Name is a protectable fan site, Complainant asserts that “it really is primarily a pretext for cybersquatting or commercial activity, and that there is no fair use of the Domain Name in this case” because, inter alia, the website has a similar look and feel to Complainant’s website, Respondent did not respond to a demand letter, and the website “implies a high risk of implied false affiliation with the Complainant and its activities, as it could be understood that the Domain Name resolves to one of Complainant’s websites.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, “[g]iven the Complainant’s numerous trademark registrations for the STAR STABLE mark worldwide, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant and the Complainant’s STAR STABLE mark when the Domain Name was registered”; and Respondent’s website “resolves to a website which reproduces on top the Complainant’s mark in an unauthorized manner, also reproduces the Complainant’s favicon, it has the same look and feel as the Complainant’s website, and it does not include any clear and prominent disclaimer highlighting the lack of relationship between the Complainant and the Respondent.”

No administratively compliant Response has been filed.

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#### 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 UDRP).

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#### 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 UDRP).

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#### 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 UDRP).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registration cited by Complainant, it is apparent that Complainant has rights in and to the STAR STABLE Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the STAR STABLE Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “starstablepc”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the Disputed Domain Name contains the STAR STABLE Trademark in its entirety, simply adding the letters “pc”, an abbreviation for “personal computer,” a platform on which electronic games are played. As set forth in section 1.8 of WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

#### Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, *inter alia*, “Respondent is not a licensee of the Complainant, and it has not received any consent, permission, authorization or acquiescence from the Complainant to use its STAR STABLE mark in association with the registration of the Domain Name”; “Complainant has found nothing to suggest that the Respondent owns any identical or similar trademarks to the Domain Name or to the term ‘starstablepc’”; “[t]here is no evidence that the Respondent has been commonly known, by the Domain Name or by the term ‘starstablepc’”; and “Respondent is not making a legitimate noncommercial or fair use of the Domain Name.” Further, in apparent anticipation of a defense from Respondent that the website associated with the Disputed Domain Name is a protectable fan site, Complainant asserts that “it really is primarily a pretext for cybersquatting or commercial activity, and that there is no fair use of the Domain Name in this case” because, *inter alia*, the website has a similar look and feel to Complainant’s website, Respondent did not respond to a demand letter, and the website “implies a high risk of implied false affiliation with the Complainant and its activities, as it could be understood that the Domain Name resolves to one of Complainant’s websites.”

WIPO Overview 3.0, section 2.1, states: “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 Panel finds that Complainant has established its *prima facie* case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

#### Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has 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 the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has 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 the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s 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 the registrant’s website or location or of a product or service on the registrant’s website or location.

Using the Disputed Domain Name in connection with a website that appears to be a website for Complainant is “likely fraudulent” and “indicates an intent to deceive or, at a minimum, act in bad faith with the intent for commercial gain.” *DocuSign, Inc. v. Traffic CPMiPV, Maria Carter*, WIPO Case No. D2010-0344. See also, e.g., *Emu (Aus) Pty Ltd. and Emu Ridge Holdings Pty Ltd. v. Antonia Deinert*, WIPO Case No. D2010-1390 (“a reasonable person who visited the Respondent’s website was likely to be misled in relation to the source, sponsorship, affiliation, or endorsement of the website and the products purportedly made available for online sale on the website”).

Although Complainant has anticipated a potential defense from Respondent that the Disputed Domain Name is being used in connection with a fan website that does not constitute bad faith, it is at best unclear to the Panel that Respondent’s website could accurately be described as a fan website. Additionally, Respondent has failed to submit any response at all. Accordingly, the Panel finds it unnecessary to address this issue.

Further, Respondent’s failure to respond to Complainant’s demand letter is additional evidence of bad faith. *Encyclopedia Britannica v. Zucarini*, WIPO Case No. D2000-0330; and *RRI Financial, Inc., v. Ray Chen*, WIPO Case No. D2001-1242.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **starstablepc.com**: Transferred

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## PANELLISTS

Name	<b>Douglas Isenberg</b>
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DATE OF PANEL DECISION	2022-12-20
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Publish the Decision

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