Decision for dispute CAC-UDRP-105697

Case number	CAC-UDRP-105697
Time of filing	2023-08-10 14:02:10
Domain names	starstablefree.com , starstableplay.com , starstableonlinedl.com , star-stable-online.com

Case administrator

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

Complainant

Organization	Star Stable Entertainment AB

Complainant representative

Organization	SILKA AB

Respondent

Name	Andrey Polyakov

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 names.

IDENTIFICATION OF RIGHTS

Among others, the Complainant is owner of (1) European Union Registered Trademark Number 008696775 for the word mark Star Stable, filed on November 18, 2009 and registered on April 5, 2010 in Class 9; and (2) European Union Registered Trademark Number 013204128 for the word mark STAR STABLE, filed on August 27, 2014 and registered on January 13, 2015 in Classes 16, 25, 28, and 41.

FACTUAL BACKGROUND

The Complainant is a Swedish Aktiebolag and was founded in 2010. It is the developer of a popular online adventure game named “Star Stable Online”, featuring horses and mysteries, which in 2017 is reported to have had between 400,000 and 500,000 monthly players and 12 million registered users.

The Complainant has a substantial following on social media, such as 260,000 ‘likes’ on Facebook, 360,000 subscribers on YouTube, 609,000 followers on Instagram, and 41,500 followers on the platform formerly known as Twitter.

In addition to the Complainant’s STAR STABLE registered trademark, the Complainant owns a domain name portfolio containing domain names such as <starstable.com> (created in 2007), <starstable.org> (created in 2012), and <starstableonline.net>,

<starstableonline.info> and <starstableonline.org> (each created in 2013).

The disputed domain names <starstablefree.com> and <starstableplay.com> were registered on August 2, 2021, while the disputed domain names <starstableonlinedl.com> and <star-stable-online.com> were registered on December 30, 2022. The websites associated with each of the disputed domain names reference the Complainant's game and reproduce the Complainant's logo (itself the subject of registered trademarks in the European Union and United States of America). Although the respective disputed domain names were registered at different times, the look and feel of the websites associated with (1) <starstablefree.com> and <starstableonlinedl.com>, and (2) <starstableplay.com> and <star-stable-online.com> are markedly similar. Furthermore, each site invites the user to download the Complainant's game for free and displays the exact same pink color "Play Now" button.

Each site suggests that it is a fan site in text at the foot of the home page. In the website associated with <starstablefree.com> it states, "We are fans of this game decided to create this site to introduce people to the features of Star Stable" [sic]. In the website associated with <starstableplay.com> it states, "We are the team of Star Stable fans". In the website associated with <starstableonlinedl.com> it states, "My friend and I are fans of Star Stable Online". In the website associated with <star-stable-online.com> it states, "We created our fansite so you can learn more about this game". However, the links on the home pages of <starstablefree.com> and <starstableplay.com> previously redirected to a website featuring numerous games to which users are redirected via affiliate links.

The Complainant issued a cease-and-desist letter to the Respondent on October 4, 2021 in respect of <starstablefree.com> and <starstableplay.com> but received no reply.

PARTIES CONTENTIONS

COMPLAINANT:

The disputed domain names incorporate the Complainant's registered mark STAR STABLE in its entirety, along with related keywords 'Play', 'Free', 'Online' and 'DL' (for download). The Complainant's trademark is clearly recognizable within each of the disputed domain names. In cases where a domain name incorporates the entirety of a trademark, the domain name will usually be considered confusingly similar to that mark for purposes of UDRP standing. The addition of the generic Top-Level Domain ".com" does not differentiate the domain names from the said trademark.

The Respondent lacks rights or legitimate interests in the disputed domain names. The Complainant has invested substantial resources in its STAR STABLE mark and has been using the brand since 2010, while the disputed domain names have registration dates of February 8, 2021 and December 30, 2022. The brand is not a descriptive term but is a coined word and a distinctive mark for the Complainant's online game. One would not legitimately choose this mark as a domain name with related keywords in the absence of specific rights.

The Respondent is not authorized to use the disputed domain names as a licensee, vendor, supplier, distributor or in any other form. Given the fame of the Complainant's mark, the name "Star Stable" in the disputed domain names is bound to lead users to infer that the disputed domain names have an association or nexus with the Complainant, resulting in confusion and deception. There is no such association or nexus and any use of the disputed domain names by the Respondent cannot be said to be legitimate. The disputed domain names are not used in connection with a bona fide offering of goods or services but as pretended fan sites. The disputed domain names <starstablefree.com> and <starstableplay.com> each engaged in a previous commercial use through the publication of links that redirected users to a site featuring multiple games with affiliate links. The other two disputed domain names, <starstableonlinedl.com> and <star-stable-online.com>, have configured MX servers. The Respondent has failed to make the websites associated with the disputed domain names distinct from the Complainant's official site.

The disputed domain names were registered and are being used in bad faith. It is improbable that the Respondent chose these without knowledge of the Complainant's trademark and its use in connection with a popular online game. The Respondent uses the disputed domain names to impersonate the Complainant and in the case of two of the disputed domain names has used these to redirect users to a third party website for the Respondent's commercial benefit. This indicates an intent to deceive and/or to act in bad faith for commercial gain. Active MX records on the disputed domain names <starstableonlinedl.com> and <star-stable-online.com> designate an e-mail server and can constitute bad faith use beyond mere registration of the disputed domain names. The Respondent may have plans to send suspicious e-mails for these disputed domain names. Furthermore, there is a pattern of bad faith conduct established due to the registration of multiple trademark-abusive domain names, and the Respondent would not require multiple domain names for a genuine fan site. The circumstances suggest opportunistic bad faith.

RESPONDENT:

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

Notification of the Complaint / the Respondent's default

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The Respondent's mailing address is stated to be in Kharkiv, Ukraine. The Panel is not aware as to whether this is a genuine contact address for the Respondent. Ukraine is subject to an international conflict at the date of this decision. This may impact case notification, and it is therefore necessary to consider whether the proceeding should continue.

Having given careful consideration to the issue, the Panel determines that the proceeding should continue for the following reasons. First, the Panel has been provided with no reason that would suggest that the Respondent is unaware of the proceeding or has no control over the disputed domain name. Secondly, while two of the disputed domain names were registered prior to the current conflict, the second two were registered (and therefore must necessarily have been configured by the Respondent) after the commencement of the conflict. In all cases, the Respondent supplied the same contact address to the Registrar, such that it is reasonable to infer that the Respondent is capable of receiving communications there. Thirdly, neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. Fourthly, while some of the email notifications failed, one did not produce a failure notification, suggesting that it may have been received successfully.

The Panel notes that the Complainant has adopted the mutual jurisdiction of the Courts of the location of the principal office of the concerned registrar for any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names. The principal office of the Registrar, Namecheap, Inc., is in the United States of America, and therefore is outside the conflict zone affecting the Respondent's stated contact address.

Finally, for reasons which are set out in this decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and in order that the administrative proceeding takes place with due expedition the Panel will proceed to a decision.

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

The Complainant has demonstrated that it has UDRP-relevant rights in its STAR STABLE trademark by virtue of its corresponding trademark registrations. The Second-Level Domain of each of the disputed domain names contains the said trademark in its entirety as the first element, and the fact that this is separated by a hyphen in the case of <star-stable-online.com>, or is not separated in the case of the others, is not of any significance. The addition of the terms "free", "play", "onlinedl" and "-online" respectively would not prevent a finding of confusing similarity (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

The said mark is fully recognizable in the disputed domain names based upon a straightforward side-by-side comparison. The generic Top-Level Domain in respect of the disputed domain names, namely ".com", is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant's STAR STABLE trademark.

The Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain names, noting a lack of permission or authorization on its part that would entitle the Respondent to use the disputed domain names in the manner

contended. The Complainant establishes that the disputed domain names <starstablefree.com> and <starstableplay.com> were previously put to a commercial use by the Respondent using links which forwarded to a gaming website featuring third party games and affiliate links. This contradicts any case that might have been put forward on the Respondent's behalf that the disputed domain names concerned are being used for genuine fan sites. It suggests that the other two disputed domain names are equally not genuine noncommercial fan sites since all of the disputed domain names were registered by the same Respondent, and two of these were demonstrably engaged in commercial use. In any event, the Respondent has made no attempt to differentiate the said sites from the appearance of the Complainant's site (see section 2.7.1 of the WIPO Overview 3.0).

There is a claim made in the text that each of the websites corresponding to the disputed domain names is a fan site, but this is not obvious to the causal Internet user being at the foot of the home page, and, for example, is not accompanied by a prominent disclaimer. The use of the Complainant's logo by the Respondent further contributes to the general impression made upon the viewer that the Respondent's websites are official in nature and not unofficial fan sites. The composition of the disputed domain names does not suggest that they are used in connection with noncommercial unofficial fan sites.

Taking the Complainant's assertions cumulatively, the Panel finds that these are sufficient to constitute the requisite prima facie case that the Respondent has no rights and legitimate interests in the disputed domain names (see, for example, section 2.1 of the WIPO Overview 3.0). The Respondent has not replied to the Complainant's allegations and evidence in this case. There are no submissions or evidence on the record which might serve to rebut the Complainant's prima facie case to any reasonable extent. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has established a substantial following and considerable popularity for its online game corresponding to its STAR STABLE trademark. Given the use of such mark in each of the disputed domain names, the reference to the game on the associated websites, and the use of the Complainant's logo on the associated websites, it is clear that the disputed domain names were registered in the knowledge of the Complainant's mark and with intent to target the same.

Although the Respondent claims on the websites associated with the disputed domain names that they are fan sites, the Panel has already found that this is unlikely to be the case on the balance of probabilities. Two of the disputed domain names have been used by the Respondent for a commercial purpose and the Panel is unconvinced that the remaining two, which are broadly similar in appearance, could be considered to be operating genuine noncommercial fan sites. Furthermore, the Respondent did not make any relevant assertions despite having received an opportunity to do so.

In the case of all of the disputed domain names, no attempt is made to make it clear by way of a prominent disclaimer that the associated websites are not official sites of the Complainant. The composition of the disputed domain names, with the Complainant's mark as the first and dominant part, and without any use of distinguishing expressions, such as "fan", "fans", "unofficial" or similar, indicate an affiliation between the Parties when there is none. The use of the Complainant's logo on the associated websites reinforces the impression that they are official and suggests that they provide a legitimate method of access to the Complainant's game when they do not. In the Panel's opinion, a reasonable person who visits the Respondent's website would be likely to be misled in relation to the source, sponsorship, affiliation or endorsement of such website and the products purportedly made available therein (see: Star Stable Entertainment v. Polyakov Andrey, Case No. CAC-UDRP-105015, quoting from Emu (Aus) Pty Ltd. and Emu Ridge Holdings Pty Ltd. v. Antonia Deinert, WIPO Case No. D2010-1390).

In all of these circumstances, the Panel considers that the Complainant has made out a sufficient case of registration and use in bad faith in respect of all of the disputed domain names. The Respondent has chosen not to file a Response in this case and has failed to address the Complainant's allegations of bad faith registration and use. The Respondent has not sought to provide any explanation that might have suggested that its actions regarding the disputed domain names were in good faith, and the Panel can conceive of no reasonable explanation which the Respondent might have tendered in this particular case which would have suggested that the disputed domain names were registered and have been used in good faith.

In all of these circumstances, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **starstablefree.com** : Transferred
2. **starstableplay.com** : Transferred
3. **starstableonlinedl.com** : Transferred
4. **star-stable-online.com** : Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2023-09-06

Publish the Decision