

ADMINISTRATIVE PANEL DECISION

**New Starbreeze Publishing AB c/o Starbreeze Studios v. Domain Is For Sale At Www.Dan.Com ---- c/o Dynadot
Case No. D2022-1582**

1. The Parties

The Complainant is New Starbreeze Publishing AB c/o Starbreeze Studios, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is Domain Is For Sale At Www.Dan.Com ---- c/o Dynadot, United States of America.

2. The Domain Name and Registrar

The disputed domain name <starbreezenebula.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 2, 2022. On May 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2022.

The Center appointed Andrew Brown Q.C. as the sole panelist in this matter on July 4, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, a Swedish company, is an independent developer, creator, publisher, and distributor of PC and console game with studios in Stockholm, Barcelona and Paris. The Complainant develops games based on its own proprietary rights and third-party rights, both in-house and in partnership with external game developers. The Complainant's shares are listed on the Nasdaq Stockholm.

The Complainant is the proprietor of the following registered trademarks for STARBREEZE ("the STARBREEZE trademarks").

Country/State	Number	Mark	Classes	Application Date
Sweden	362563	STARBREEZE AND LOGO	9, 41, 42	December 10, 2002
United States of America	4931006	STARBREEZE STUDIOS	9, 41, 42	May 26, 2015
United States of America	5547614	STARBREEZE INDIELABS	41	December 21, 2016
United States of America	4907597	OVERKILL A STARBREEZE STUDIO	41, 42	May 26, 2015
European Union	018642157	STARBREEZE NEBULA	35, 38, 41, 42, 45	January 21, 2022

The Complainant also claims to have goodwill and reputation in the STARBREEZE trademark in the gaming industry, not only in Sweden but also internationally. This is as a result of its operations since 1998, and the launch of well-known games both on its own and in co-operation with other gaming companies. The Complainant has provided details of the various games it has released, awards it has obtained, and articles about it from Wikipedia and on gaming websites.

As to domain names, the Complainant states that it is the owner of various domain names that include STARBREEZE trademarks, including <starbreeze.com> (registered in 1997), <starbreeze.co.uk> and <starbreeze.se>.

The disputed domain name was registered on January 21, 2022.

5. Parties' Contentions

A. Complainant

The Complainant asserts its rights in the STARBREEZE trademark. The Complainant contends that the disputed domain name is confusingly similar to the STARBREEZE trademarks in which it has rights. Further, the disputed domain name is identical to the Complainant's new trademark STARBREEZE NEBULA for which the Complainant applied for a trademark at the European Union Intellectual Property Office ("EUIPO"). This application was filed on the same day as the disputed domain name was registered.

The Complainant asserts that the disputed domain name also corresponds closely with its own domain name <starbreeze.com> which is connected to an active website featuring the Complainant's products and services. The Complainant contends that there is considerable risk that the trade public will perceive the disputed domain name as a domain name owned by the Complainant or that there is some commercial relationship with the Complainant. For all these reasons, the disputed domain name is asserted to be confusingly similar to the STARBREEZE trademarks.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is Domain Is For Sale At Www.Dan.Com --- c/o Dynadot. The Complainant does not know the true identity of the Respondent. The Complainant states that, to its knowledge, no licence

or authorisation of any other kind has been given by it to the Respondent to use the STARBREEZE trademarks. Further, the Complainant has found no information indicating that the Respondent is somehow trading under a name corresponding to the disputed domain name.

In addition, the Complainant states that the Respondent is not an authorised representative of its products or services and has never had a business relationship with it. The Complainant has not found any evidence indicating that the Respondent is using the name "Starbreeze" or "Starbreeze Nebula" as a company name or that it has any other legal rights to those names.

Finally, the Complainant states that the Respondent has no legitimate interests in the disputed domain name, given that this was registered well after the Complainant had registered its STARBREEZE trademarks in the United States of America and had established extensive goodwill in them internationally. Further, the disputed domain name does not reflect the Respondent's common name or organisation name. In addition, the Complainant states that the offering of the disputed domain name for sale does not constitute a *bona fide* sale of goods or services or a legitimate noncommercial or fair use. Accordingly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name on January 21, 2022, the same day that the Complainant, being the owner of existing STARBREEZE trademarks, filed its application for STARBREEZE NEBULA. The Complainant claims that the fact that the disputed domain name was registered on the same day as its trademark application clearly shows that the disputed domain name was registered and is being used in bad faith. The Complainant relies on the fact that the disputed domain name was advertised for sale at USD 25,000 through <dan.com> on April 23, 2022, and is now for sale at USD 9,550.

The Complainant contends that the Respondent monitored incoming trademark applications at the EUIPO for the purpose of trying to register, sell, and prevent trademark applicants such as the Complainant from acquiring domain names that correspond to the marks they have applied for.

The Complainant relies on the high price at which the disputed domain name has been and is advertised for sale. Further, it relies on the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 3.8.2 that "in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalise on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name:(iv) following the complainant's filing of a trademark application".

The Complainant points to WIPO Case No. [D2021-1110](#), *Master Delivery Limited Liability Company vs Domain Protection Services, Inc. / Karim Aimeldinov* and WIPO Case No. [D2020-2111](#), *Pfizer Inc. vs Super Privacy Service LTD c/o Dynadot / bilal bal* where registrations of the disputed domain names had been made only two and three days after the complainant had filed trademark applications for the same marks and the panels found registration by the respective respondents in breach of the UDRP.

The Complainant contends that the disputed domain name is only valuable because of its association with its STARBREEZE NEBULA mark. It claims that the Respondent acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to registration of the disputed domain name.

The Complainant asserts that the Respondent's opportunistic registration of the disputed domain name following the Complainant's trademark application is evidence of bad faith in this context. Further, it claims that the Respondent's registration and use of the disputed domain name, including its passive holding, evidences bad faith registration and use.

The Complainant notes that it became aware of the registration of the disputed domain name shortly after it

was registered. It sent a cease and desist letter to the Respondent on February 10, 2022 requesting a transfer of the disputed domain name to it. No response has been received despite one reminder being sent. The Complainant states that it is clear from this behaviour that the Respondent has noticed the Complainant's concerns over the registration and use of the disputed domain name but has chosen to ignore the attempts to make contact. For all these reasons, the Complainant asserts that the disputed domain name must be considered to have been registered and used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of its STARBREEZE trademarks in Sweden and in the United States of America. It has also provided evidence of extensive use of its STARBREEZE trademark in Sweden and internationally. The Panel has also consulted the status of the Complainant's trademark application in the European Union for STARBREEZE NEBULA, number 018642157, which turned into a registration on May 28, 2022.

It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights in the STARBREEZE trademarks. The Panel is satisfied that the Complainant is well-known by its STARBREEZE trademarks as a supplier of games in the gaming industry. The mark STARBREEZE is a distinctive mark in its own right.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's distinctive STARBREEZE trademarks. For the sake of completeness, the Panel also notes that the disputed domain name is identical to the STARBREEZE NEBULA trademark.

The Panel finds that the disputed domain name is therefore clearly confusingly similar to the Complainant's STARBREEZE trademarks and finds in favor of the Complainant on this first element.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

- (i) that before notice of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) that the Respondent has been commonly known by the disputed domain name, even if it had acquired

no trademark or service mark rights; or

- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the STARBREEZE trademarks pursuant to clause 4(c) of the Policy. The Complainant has prior rights in the STARBREEZE trademarks which long precede the Respondent's registration of the disputed domain name.

The Panel is satisfied that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Further, the Respondent has failed to show that it has acquired any rights in or in respect to the disputed domain name or that the disputed domain name is used in connection with a *bona fide* offering of goods or services. The Respondent had the opportunity to demonstrate its rights or legitimate interests but it did not reply to the Complainant's Complaint.

The Panel therefore finds that the Complainant has satisfied the burden of establishing a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

C. Registered and Used in Bad Faith

The Panel is satisfied that the commentary in the [WIPO Overview 3.0](#) at section 3.8.2 applies to this case and that the disputed domain name was registered in bad faith. The particular facts which the Panel relies on, in combination, for this conclusion are:

- (i) the distinctive nature of the STARBREEZE trademark and even more so the combination trademark STARBREEZE NEBULA;
- (ii) even the most cursory trademark or online search of existing domain names prior to the Respondent registering the disputed domain name would have instantly revealed the Complainant and its STARBREEZE trademarks;
- (iii) the fact that the Respondent registered the same distinctive combination as its disputed domain name on the same day as the Complainant's EUIPO trademark application is not a coincidence but evidences intent to unfairly capitalise on the new nascent mark (being part of the Complainant's well-known STARBREEZE stable of marks);
- (iv) the fact that the Respondent has chosen not to use a personal name but to adopt the name Domain Is For Sale At Wwww.Dan.Com ---- c/o Dynadot indicates an intent to hide the real identity, and probably to sell the disputed domain name;
- (v) the fact that the Respondent has not replied to either this Complaint or to the Complainant's cease and desist letter of February 10, 2022 (and one reminder). Had there been an innocent and genuine explanation for registration of the disputed domain name on the same day as the Complainant's trademark application for STARBREEZE NEBULA, a respondent acting *bona fide* would have responded to each of these communications.

The Panel is also satisfied that the disputed domain name has been used in bad faith. The Panel is satisfied that the doctrine of passive holding applies in this case ([WIPO Overview 3.0](#) section 3.33). Relevant factors under the doctrine which apply in this case are:

- (i) the Complainant's STARBREEZE trademark is well-known internationally and has become exclusively associated with the Complainant. When confronted with the disputed domain name, many Internet users in the gaming industry would wrongly assume that the disputed domain name is owned by, connected with, licensed by, or otherwise endorsed by the Complainant;
- (ii) there is no evidence of any contemplated or actual *bona fide* use of the disputed domain name. The high prices at which the disputed domain name has been variously offered for sale by the Respondent well exceed any presumable out-of-pocket expenses that the Respondent could have incurred when registering the disputed domain name.

Accordingly, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor of the Complainant.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <starbreezenebula.com>, be transferred to the Complainant.

/Andrew Brown Q.C./

Andrew Brown Q.C.

Sole Panelist

Date: July 18, 2022