

ADMINISTRATIVE PANEL DECISION

STABLE APP LLC v. Unlimint Holding EU Ltd/ Mr Admin - Cardpay Ltd
Case No. D2023-2594

1. The Parties

The Complainant is STABLE APP LLC, United States of America (“United States”), represented by Abello Abogados, Colombia.

The Respondent is Unlimint Holding EU Ltd/ Mr Admin - Cardpay Ltd, Cyprus, represented by Hogan Lovells (Paris) LLP, France.

2. The Domain Name and Registrar

The disputed domain name <stable.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in Spanish with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Indeterminado) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also requested the Complainant to specify the language of the proceeding. The Complainant filed an amended Complaint on June 24, 2023, and requested English as language of the proceeding.

The Center verified that the Complaint together with the amended 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 June 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2023. The Response was filed with the Center on July 20, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 14, 2023. 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

On January 20, 2022, Messrs Ovalle, Ibanez, and Delgado created a WhatsApp chat group under the name “Stable”; the Panel infers it’s to plan and co-ordinate the design and launch of a new financial service under the name “Stable”.

On February 9, 2022, the Respondent purchased the rights to the disputed domain name for USD 1,008,925 which was, at that time, the third highest domain name sale in 2022.

On March 9, 2022, Messrs Ovalle, Ibanez, and Delgado received a marketing or brand strategy proposal from an advertising agency. The proposal included the design for the proposed business’ trademark – STABLE and noted the disputed domain name “may be available”.

Mr. Delgado then engaged the services of GoDaddy domain brokers. On March 11, 2022, the domain broker asked Mr. Delgado for a budget and suggested a starting offer of USD 25,000 with a maximum offer of USD 250,000. It is unclear whether Mr. Delgado replied to this request as on March 15, 2022, the domain broker inquired again what budget Mr. Delgado wished to operate under, noting that most aftermarket domain names sell for between USD 500 and USD 5,000 “but it depends on the quality of the domain name and who currently owns it.” Mr. Delgado replied, proposing USD 900. The domain broker responded pointing out that the disputed domain name had recently sold for over USD one million and suggested a starting bid of USD 1.2 million.

On March 28, 2022, Ark House S.A.S, a Colombian company, applied on behalf of the yet to be formed Complainant to register STABLE as a trademark in Colombia in respect of financial services in International Class 36. This trademark was formally registered in April 2023, No. 731542.

On March 28, 2022, Ark House S.A.S also secured an International Registration (“IR”) No. 1442795, STABLE in respect of software in International Class 9, financial, monetary and banking services in International Class 36 and related services in International Class 42. The International Registration designated Brazil, Mexico and the United States. (Later, protection was also secured in Chile and the European Union in March 2023.)

On March 30, 2022, the Complainant was incorporated in Delaware in the United States.

On October 9, 2022, Mr. Delgado secured the domain name <stable-app.com>, which is the domain name the Complainant currently uses to promote its services.

In April 2023, the Complainant participated in the *Consensus Pitchfest 2023 – Finance for the Unbanked* fair at which one of the co-founders of the Complainant demonstrated the Complainant’s innovative system.

On May 4, 2023, the Complainant entered into an investment agreement with Mastercard International Incorporated for the launch of the Complainant’s service in Mexico and Colombia. That agreement includes the possibility of expanding into other countries.

During 2023, the Complainant or Mr. Delgado made a number of other attempts to secure the rights to the disputed domain name.

As mentioned above, the Respondent acquired the rights to the disputed domain name on February 9, 2022, for a price of USD 1,008,925.

The Respondent is a licensed Electronic Money Institution in the European Union and the European Economic Area. It operates “with ease” across Europe, the United Kingdom, Latin America, Asia Pacific, India and Africa.

Prior to the Respondent’s acquisition of the disputed domain name, the disputed domain name resolved to a website for “America’s Online Horse Directory” or redirected until December 2021 to “www.horseexpousa.com”.

According to the Response, the Respondent secured the registration in connection with a new service offering it was planning. The service has not yet launched but, on August 9, 2022, the Respondent incorporated a new subsidiary in Cyprus under the name Stable Defi Ltd. In the meantime, the disputed domain name has resolved to a parking page. At least initially, the parking page simply stated “Domain inquiries: info@newreach.com” or “stable.com may be available DOMAIN INQUIRIES: info@newreach.com”.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The Respondent does not dispute that the Complainant has rights in the registered trademark STABLE and, therefore, that the disputed domain name is identical to the Complainant’s trademark. Accordingly, the first requirement under the Policy is satisfied.

B. Registered and Used in Bad Faith

In the circumstances of the present case, it is appropriate to consider the third requirement under the Policy next.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g.*, *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. D2010-0470.

The Complainant contends that the disputed domain name was registered and is being used in bad faith because there has been no use of the disputed domain name since its registration by the Respondent in connection with the Respondent’s commercial activities even after a year and, instead, the disputed domain name directed to a webpage stating “stable.com may be available DOMAIN INQUIRIES: info@newreach.com”. The Complainant further contends that the use of the disputed domain name in connection with financial services would infringe the Complainant’s trademark. According to the Complainant:

“The legitimate interest of the Complainant regarding the domain name www.stable.com should not be subject to the Defendant’s whim by keeping it inactive solely for the purpose of unjust enrichment.”

The Complainant reinforces its point by pointing out that it has waited a year to give the Respondent an opportunity to put the disputed domain name to genuine use and, in addition, the amount “requested” by the Respondent to transfer the disputed domain name has increased over time.

The difficulty confronting the Complainant is that, generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

However, the Respondent acquired the disputed domain name a month or so before the Complainant was incorporated on March 30, 2022, and even before the Complainant’s associated company applied to register the trademarks on March 28, 2022.

Perhaps recognising this difficulty, the Complainant has pointed out that Messrs Ovalle, Ibanez, and Delgado started a WhatsApp chat group under the name “Stable” on January 20, 2022.

As Annex R to the Complaint (which is the proof the Complainant advances to corroborate the date the WhatsApp chat group was started) states on its face, however, WhatsApp “[m]essages and calls are end-to-end encrypted. No one outside of this chat, not even WhatsApp, can read or listen to them.”

The Panel considers this feature of WhatsApp is well-known.

The Complainant has not made any attempt to suggest that the Respondent was, or became, a member of the WhatsApp chat group before the Respondent paid over USD one million to acquire the disputed domain name.

There does not appear from the record in this case to have been any other public circumstance from which the Respondent could have become aware of the plans for the Complainant’s project. Nor has there been any suggestion that the Respondent, or someone associated with it, was privy to information about the plans to use “Stable” being developed by the Complainant’s backers.

In these circumstances, therefore, the Panel finds that the Complainant has failed to establish that the Respondent registered the disputed domain name in bad faith. So far as the record in this proceeding reveals, the Respondent did not, and could not, have known about the Complainant or its trademark and, accordingly, cannot be found to have registered the disputed domain name to take advantage pre-emptively of the plans of the Complainant and its backers.

Accordingly, the Complainant cannot establish the third requirement under the Policy and the Complaint must fail

C. Rights or Legitimate Interests

In the circumstances, there is no value in considering whether the second requirement under the Policy has been satisfied as the Complaint must fail in any event.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides, in part:

“If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

Paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

The fact that a Complaint has failed is not in itself sufficient to warrant a finding of reverse domain name hijacking.

In the present case, however, the disputed domain name was registered by the Respondent before the Complainant was incorporated and also before registration of the Complainant's trademark was sought.

In addition, the Complainant's backers knew from the advertising agency's presentation before they adopted "Stable" as a trademark that someone already had the disputed domain name registered. That knowledge did include the statement that the disputed domain name may be for sale. Following up on that knowledge, Mr. Delgado did seek to explore purchase. He authorised a token bid of USD 900 even after being told the holder had paid over USD one million recently. Moreover, the Complaint has sought to characterise the advice being provided by the so-called "domain broker" as avaricious conduct by the Respondent.

It has been established for many years now under the Policy that a second or junior user does not become entitled to a domain name merely because the holder is not using it publicly, at least where there is no evidence that the Respondent has targeted the second comer or otherwise sought to take advantage of the significance of the disputed domain name as some other person's trademark, whether those trademark rights are established or incipient.

Given the facts known to the Complainant before the Complaint was filed and especially bearing in mind that the Complainant is professionally represented in this proceeding, the Panel considers it is fair to characterise the bringing of the Complaint in this proceeding as reverse domain name hijacking.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: August 28, 2023