Decision for dispute CAC-UDRP-100254

Case number	CAC-UDRP-100254
Time of filing	2011-05-06 15:27:25
Domain names	natioonalcar.com, enterpriserentals.com, enterpires.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Vanguard Trademark Holdings USA, LLC
Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Bret Fausett, Court-Appointed Receiver

OTHER LEGAL PROCEEDINGS

Enterprise Rent-A-Car Company v. Andrey Vishnevskii d/b/a Cosmos1 aka NA NA (NAF No. 263577) decision issued in favor of Complainant 06/18/2004

Enterprise Rent-A-Car Company v. James D'Souza (NAF No. 1169736 complaint withdrawn without prejudice 07/02/2008

IDENTIFICATION OF RIGHTS

First Complainant, Vanguard Trademark Holdings USA LLC, is the record owner of the following registrations for the NATIONAL and NATIONAL CAR RENTAL marks in the European Community:

Registration No. 000190413 application date 1 April 1996, issued 25 June 2002 (and not 06 June 2002 as stated in the Complaint, this error being considered by the Panel as a typo) for NATIONAL for “automobile rental and reservation services in International Class 39.”

Registration No. 000190439 application date 1 April 1996, issued 12 March 2003 for NATIONAL CAR RENTAL for “automobile rental and reservation services in International Class 39.”

First Complainant is the record owner of the following registrations for the relevant NATIONAL and NATIONAL CAR RENTAL marks in the United States:

Registration No. 1,537,711 issued 20 September 1988 for NATIONAL in International Class 39 for “automobile rental” (Secondary meaning shown).

Registration No. 1,540,913 issued 23 May 1989 for NATIONAL CAR RENTAL (“Car Rental” disclaimed) in International Class 39 for “automobile rental services.”

Second Complainant, Enterprise Holdings, Inc., has registered its ENTERPRISE mark and owns the following European Community registration, among others:

European Community Trademark Registration No. 36384 dated 1 December 1998 for ENTERPRISE in Classes 12, 36 and 39, including “Vehicle rental services.”

Second Complainant is also the record owner of the following registrations for the ENTERPRISE and ENTERPRISE RENT-A-CAR and related marks in the United States:

Registration No. 1,343,167 issued 18 June 1985
ENTERPRISE in International Classes 35, 37, 39 and 42, including “short-term rental and leasing of automobiles and trucks” and "automotive dealership services."

Registration No. 2,371,192 issued 25 July 2000
ENTERPRISE RENT-A-CAR in International Class 39 (“RENT-A-CAR” disclaimed apart from the mark as shown) for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

Registration No. 2,424,137 issued 23 January 2001
WWW.ENTERPRISE.COM in International Class 39 for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

Registration No. 2,458,529 issued 5 June 2001
ENTERPRISE.COM in International Class 39 for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

FACTUAL BACKGROUND

FACTS ASSERTED BY COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

FACTUAL AND LEGAL GROUNDS. Rule 3 (b)(ix):

This is a Class Complaint filed on behalf of (1) Vanguard Trademark Holdings USA LLC and (2) Enterprise Holdings, Inc. and is filed pursuant to Paragraph 4, Art. 3 of the Supplemental Rules in that it is:

Based on legal arguments applicable equally, or substantially in the same manner, to both of the disputed domain names;

The person representing both Complainants joined in the Class Complaint is authorized to act on behalf of each of the Complainants; and

The Panel can order transfer of any of the disputed domain name(s) only to the individual Complainant on which behalf such transfer is requested in the Class Complaint, in accordance with the Policy.

As of the date of Complainants' commencement of this proceeding, all three domain names at issue, "natioonalcar.com", "enterpriserentals.com" and "enterpires.com", are owned of record by the same person, Bret Fausett, Court-Appointed Receiver c/o Adorno Yoss.

The representative filing this Complaint has filed numerous UDRP actions upon behalf of each Complainant as well as jointly, and is authorized to act upon behalf of both Complainants and, if necessary, will provide written authorization in that regard.

1. Confusing similarity. Rule 3(b)(ix)(i); Policy Paragraph 4(a)(i):

The disputed "natioonalcar.com" and "enterpires.com" domain names are examples of typosquatting, a process in which a domain name registrant attempts to register a confusingly similar domain name that differs from a protected mark only slightly by taking advantage of common typing errors. The domain "enterpriserentals.com" fully incorporates the mark of the Second Complainant. In detail:

The domain "natioonalcar.com" is confusingly similar to the First Complainant's NATIONAL mark. "natioonalcar.com" contains of the parts "natioonal" and "car". The word "natioonal" does not exist and is similar to the mark NATIONAL as it has only one additional "o" in it. This "o" has to be considered to be an intentional typo as there is no other feasible explanation. The second part, "car", is a generic term and related to the First Complainant's business. A general rule under Policy Paragraph 4(a)(i) is that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds additional words that correspond to the goods or services offered by the third party under the mark. See Space Imaging LLC v. Brownell, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where Respondent's domain name combines Complainant's mark with a generic term that has an obvious relationship to Complainant's business); see also Brown & Bigelow, Inc. v. Rodela, FA 96466 (Nat. Arb. Forum Mar. 5, 2001) (finding that the "hoylecasino.net" domain name is confusingly similar to Complainant's HOYLE mark, and that the addition of "casino," a generic word describing the type of business in which Complainant is engaged, does not take the disputed domain name out of the realm of confusing similarity). There is no plausible scenario whereby the predecessor-in-interest of the Respondent could have registered the domain names in dispute without being aware of the First Complainant's marks and related domain names. Further, as shown the addition of a generic term does not eliminate the confusingly similarity. The fact that "natioonal" contains a typo does not privilege the Respondents legal position because the misspelling of a word is considered not to create a distinct mark but to render the domain name confusingly similar to the complaint's marks (see below next paragraph for proves).

The domain "enterpires.com" is confusingly similar to the Second Complainant's ENTERPRISE and ENTERPRISE.COM mark. The word "enterpires" does not exist but proves strong similarity to the mark ENTERPRISE. "enterpires" and ENTERPRISE consist of the same letters but in a slightly changed order. The misspelling of a word is considered not to create a distinct mark but to render the domain name confusingly similar to the complaint's marks. Changing the order of some letters in Second Complainant's mark creates a confusing similarity between the disputed domain "enterpires.com" and Complainant's mark ENTERPRISE and ENTERPRISE.COM. See Belkin Components v. Gallant, FA 97075 (Nat. Arb. Forum May 29, 2001) (finding the "belken.com" domain name confusingly similar to the complainant's BELKIN mark because the name merely replaced the letter "i" in the complainant's mark with the letter "e").

The domain “enterpriserentals.com” is confusingly similar to the Second Complainant’s ENTERPRISE and ENTERPRISE RENT-A-CAR mark. The disputed domain consists of the words “Enterprise” and “rentals”. “Enterprise” is identical with the Second Complainant’s ENTERPRISE mark. The word “rentals” is a generic word and related to the business of the Second Complainant. As previously stated, a general rule under Policy Paragraph 4(a)(i) is that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds additional words that correspond to the goods or services offered by the third party under the mark. See Victoria’s Secret v. Zuccarini, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant’s marks). The Second Complainant operates an on-line car rental site. Hence, the word “rental” is related to the business of the Second Complainant. Further the word “rentals” is the plural of “rent” which is contained in the Second Complainant’s ENTERPRISE RENT-A-CAR mark.

2. Right to or Legitimate Interests.Rule 3(b)(ix)(2); Policy Paragraph 4(a)(ii).

With regards to the disputed “natioonalcar.com” and “enterpires.com” domain names, the practice of the predecessor-in-interest of the Respondent of typosquatting demonstrates a lack of rights or legitimate interests pursuant to Policy Paragraph 4(a)(ii). See Nat’l Ass’n of Prof’l Baseball Leagues, Inc. v. Zuccarini, D2002-1011 (WIPO Jan. 21, 2003) (“Typosquatting … as a means of redirecting consumers against their will to another site, does not qualify as a bona fide offering of goods or services, whatever may be the goods or services offered at that site.”); see also IndyMac Bank F.S.B. v. Ebeyer, FA 175292 (Nat. Arb. Forum Sept. 19, 2003) (finding that the respondent lacked rights and legitimate interests in the disputed domain names because it “engaged in the practice of typosquatting by taking advantage of Internet users who attempt to access Complainant's “indymac.com” website but mistakenly misspell Complainant's mark by typing the letter ‘x’ instead of the letter ‘c’”).

With regard to the disputed “enterpriserentals.com” domain name, the use of this domain names is neither a bona fide offering of goods or services pursuant to Policy Paragraph 4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy Paragraph 4(c)(iii). See Golden Bear Int’l, Inc. v. Kangdeock-ho, FA 190644 (Nat. Arb Forum Oct. 17, 2003) (“Respondent’s use of a domain name confusingly similar to Complainant’s mark(s) to divert Internet users to websites unrelated to Complainant’s business does not represent a bona fide offering of goods or services under Policy Paragraph 4(c)(i) or a legitimate noncommercial or fair use under Policy Paragraph 4(c)(iii).”).

3. Registered and Used in Bad Faith. Rule 3(b)(ix)(3); Policy Paragraph 4(a)(iii).

The Respondent is the court-appointed receiver in a court action in which he was authorized to take possession of certain “domain name assets” of Lead Networks Domains Private Limited including the disputed domains. Hence the domains have been registered by Lead Networks Domains Private Limited. The fact that the Respondent is a court appointed receiver does not impede the Complaint. A court appointed receiver is considered to be a person placed in the custodial responsibility for the property of others, including tangible and intangible assets and rights. A court appointed receiver does not hold the assets of the others for himself but with a clear purpose. Therefore the rights and obligations of the others concerning the certain assets in the custodial responsibility of the receiver are to be exercised by the receiver itself. A Complaint may be preceded against a court appointed receiver. See Vanguard Trademark Holdings USA LLC v. Bret Fausett, Court-Appointed Receiver c/o Adorno Yoss, FA 332174 (Nat. Arb. Forum August 9, 2010). The court appointed receiver had the possibility to reject his appointment as court appointed receiver. Further, the Respondent has been contacted via email by the Second Complainant’s counsel and did not react in any way.

A review of the web pages of the Respondent’s predecessor-in-interest shows that the web pages were set up with a view to commercial gain from “click-through” payments from internet users who make mistakes typing in the web sites of the Complainants. The links of the disputed web pages to which the domain names at issue resolve lead to other providers of rental cars.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainants have, to the satisfaction of the Panel, shown the Domain Names are confusingly similar to marks in which the respective Complainants have rights (within the meaning of Policy Paragraph 4(a)(i)).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainants have, 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 Policy Paragraph 4(a)(ii)).

BAD FAITH

The Complainants have, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of Policy Paragraph 4(a)(iii)).

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. In line with the complaint check, the Case Administrator asked the Complainants to specify as to whether the domain name enterpirse.com or enterpires.com is disputed. The Complainants met this requirement by filing an amended complaint. As no administratively compliant response has been filed, a simplified decision was due.

PRINCIPAL REASONS FOR THE DECISION

1.
a) The Panel finds that the disputed domain name “natioonalcar.com” is confusingly similar to the First Complainant’s registered NATIONAL trade marks.

b) The Panel finds that the disputed domain name “enterpires.com” is confusingly similar to the Second Complainant’s registered ENTERPRISE and ENTERPRISE.COM trade marks.

c) The Panel finds that the disputed domain name “enterpriserentals.com” is confusingly similar to the Second Complainant’s registered ENTERPRISE and ENTERPRISE RENT-A-CAR trade marks.

2.
a) The Panel finds that the Respondent has made no use of, or demonstrable preparations to use, neither of the domain names in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain names, nor is commonly known under the disputed domain names.

b) The Panel notes that neither the domain names holder’s name or his contact details nor his predecessor-in-interest name or contact details contain any reference to the domain names in dispute.

c) In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of “natioonalcar.com” and/or “enterpires.com” and/or “enterpriserentals.com”.

3.
The Complainants also proved that the Respondent and/or his predecessor-in-interest have engaged in a pattern of conduct regarding bad faith domain name registration and use of domain names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NATIOONALCAR.COM**: Transferred
2. **ENTERPRISERENTALS.COM**: Transferred
3. **ENTERPIRES.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2011-06-27

Publish the Decision