Decision for dispute CAC-UDRP-100653

Case number	CAC-UDRP-100653
Time of filing	2013-08-26 22:01:06
Domain names	enterprisevanrental.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	PrivacyProtect.org

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations for the ENTERPRISE mark in the European Union, Canada and the United States. All these trademark registrations predate the date of registration of the disputed domain name.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, Enterprise Holdings, Inc. is the owner of the ENTERPRISE mark which, through its operating subsidiaries, is used in connection with the Enterprise Rent-A-Car vehicle rental business and which includes van rental services.

The Complainant began renting cars in 1957 and has used the ENTERPRISE mark for car rental services in the United States since 1969 and Canada since 1984. The Complainant is one of the largest vehicle rental companies in the world with revenues in excess of $9 billion and in excess of 850,000 vehicles. With over 7000 offices worldwide, the Complainant is a recognized leader in the vehicle rental business. The Complainant expanded its Enterprise Rent-A-Car vehicle rental business

including van rentals to Europe in 1994 and has operations in the United Kingdom, Germany and Ireland.

The Complainant operates vehicle rental sites at www.enterprise.com (to which www.enterpriserentavan.com also resolves), www.enterprise.ca, www.enterprise.de, www.enterprise.co.uk. The Complainant offers a variety of vans, including Cargo Vans, High Roof Cargo Vans and Pacel Vans.

As of the date of Complainant's commencement of this proceeding, the domain name at issue, enterprisevanrental.com, is owned of record by PrivacyProtect.org c/o Domain Admin ID#10760. Once notified of this Complaint, the current record owner, PrivacyProtect.org c/o Domain Admin ID#10760, most likely will instruct its Registrar to disclose another owner of the domain name at issue.

In the Panel's decision in Vanguard Trademark Holdings USA LLC, v. WanZhongMedia c/o Wan Zhong, No. 100221 (Czech Arbitration Court, March 29, 2011) it was stated:

[I]t would be against the spirit and the essence of the system to oblige the Complainant to file a new Complaint or a amended Complaint each time the name of the Respondent is changed during the procedure because of the use of a proxy/privacy service provider…Therefore, the Panel takes the view that no amended Complaint is necessary. The initial Complaint has been regularly filed. From a procedural point of view, the change of the name of the Respondent after the notification of the Complaint shall be simply disregarded.

As a result, Complainant does not believe that it should be required to file an amended Complaint once the Registrar "draws back the curtain" to reveal the supposed real owner of the domain name at issue.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant bases the Complaint on the following legal grounds:

1. Confusing similarity. ICANN Rule 3(b)(ix)(i); ICANN Policy §4(a)(i).

The enterprisevanrental.com domain name is confusingly similar to the Complainant's ENTERPRISE mark . The enterprisevanrental.com domain name takes the ENTERPRISE mark in its entirety and merely adds the term "van rental", which describes Complainant's licensees' business. As a general rule under [ICANN] Policy par. 4(a)(1), 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. The Complainant cites several UDRP decisions in support of this statement.

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

The Respondent has no rights or legitimate interests in the enterprisevanrental.com domain name.

In light of the long-standing use and registration of the ENTERPRISE mark in connection with vehicle rental services, including van rental services, the Respondent cannot have any legitimate rights in the enterprisevanrental.com domain name when it is used in connection with a web site that seeks to divert users from the Complainant's web page to sites offering services from entities unrelated to the Complainant. There is clear evidence from the Respondent's conduct that when the enterprisevanrental.com domain name was registered, the Respondent was well aware of the existence of Complainant's rights in the ENTERPRISE mark in connection with vehicle rental services.

The enterprisevanrental.com domain name resolves to a generic web page commonly used by domain name owners seeking to "monetize" their domain names through "click-through" fees. The enterprisevanrental.com domain name currently resolves to a web page carrying the heading "Enterprisevanrental.com." Beneath that heading are the following "Related Searches":

Rental Car
Vehicle Rental
Van Hire
Cargo Van Rental
15 Passenger Van Rental
Cargo Van Rentals One Way
Hertz Rental
Car Rental Canada

Clicking on any of the links listed above takes the user to another web page unrelated to the Complainant. For example, the link “Rental Car” takes the user to a web page that includes further links to many of Enterprise Rent-A-Car’s competitors, including Thrifty Car Rental, Budget Rent A Car, Avis and Hertz. In a similar manner, the link “Vehicle Rental” takes the user to a web page that also includes further links to many of Enterprise Rent-A-Car’s competitors, including Avis, Dollar Rent-A-Car, Budget and Hertz.

This use of the enterprisevanrental.com domain name is neither a bona fide offering of goods or services pursuant to §4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to §4(c)(iii) of the Policy.

The Complainant has not licensed or otherwise permitted the Respondent to use the ENTERPRISE mark (or variations thereof) in connection with vehicle rental or van rental services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE mark. In addition, the Respondent is clearly not making any legitimate noncommercial or fair use of enterprisevanrental.com. In fact, any claim in that regard is easily dismissed since the web page to which the enterprisevanrental.com domain name resolves is a generic web page commonly used by domain name owners seeking to “monetize” their domain names through “click-through” fees.

Moreover, there is nothing to indicate that Respondent is commonly known as “Enterprise Van Rental.”

The Complainant operates an on-line vehicle rental web site at enterprise.com to which enterpriserentavan.com resolves. It is clear that the Respondent has no legitimate rights in the enterprisevanrental.com domain name and that the enterprisevanrental.com domain name is being used to divert Internet traffic to Respondent’s web page when Internet users try to reach the Complainant's web site. Such a use constitutes a lack of rights or legitimate interest in the enterprisevanrental.com domain name under §4(c)(i) and (ii) of the Policy. Because of the commercial nature of the web site to which the enterprisevanrental.com domain name resolves, it seems beyond question that the use of the enterprisevanrental.com domain name is not a noncommercial or fair use under the Policy.

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

The Respondent registered and is using the enterprisevanrental.com domain name, in a manner that evidences a clear intent to trade upon the goodwill associated with the Complainant’s ENTERPRISE mark for vehicle rental services including van rental services. The Respondent deliberately registered and is using the enterprisevanrental.com domain name that is confusingly similar to the Complainant’s ENTERPRISE mark to attract, for commercial gain, Internet users to the Respondent’s web site, by creating a likelihood of confusion with the ENTERPRISE mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s web site and the services offered on or through the Respondent’s web site.

The bad faith regarding the registration and use of the enterprisevanrental.com domain name is clearly evident from the fact that the web page to which the enterprisevanrental.com domain name resolves is a so-called “parking page” designed for the sole purpose of generating “click-through” fees. A review of the web page at the enterprisevanrental.com domain name makes it very clear that the Respondent set up the web site at the enterprisevanrental.com domain name with a view to commercial gain from “click-through” payments from Internet users seeking the Enterprise Rent-A-Car vehicle rental web site. Although some visitors may realize that they are not on the “real” Enterprise Rent-A-Car web page, there must inevitably be a number who do “click through.” The very essence of setting up the web site to which the enterprisevanrental.com

domain name resolves must be that it does result in commercial gain from Internet users accessing the links through the web site to which the enterprisevanrental.com domain name resolves. Clearly, the Respondent does not operate a business known as “Enterprise Van Rental,” nor to the best of the Complainant’s knowledge, the Respondent does not advertise using “Enterprise Van Rental.”

The business model based upon use of a domain name such as the enterprisevanrental.com domain name to attract users to a web site unrelated to Enterprise Rent-A-Car is clear evidence that the Respondent registered and is using the enterprisevanrental.com domain name at issue in bad faith pursuant to §4(b)(iv) of the Policy.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

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.

At the time of the commencement of this proceedings, the owner of record of the disputed domain name was PrivacyProtect.org c/o Domain Admin ID#10760.

As the Complainant correctly predicted, once notified of the Complaint, the Registrar disclosed another owner for the disputed domain name, namely Mr. Bolama of Cybercity, Ebene Mauritius.

While the Czech Arbitration Court (CAC) notified the Complainant with this change, it also informed the Complainant that in line with decision No 100221 the CAC shall not require the Complainant to change the identification of the Respondent; however the Complainant could do so.

The Complainant preferred not to change the Respondent's name in the Complaint based on the arguments of CAC decision No. 100221.

PRINCIPAL REASONS FOR THE DECISION

1. Confusing similarity.

The Panel agrees with the Complainant that the enterprisevanrental.com domain name is confusingly similar to the ENTERPRISE mark. The enterprisevanrental.com domain name takes the ENTERPRISE mark in its entirety and merely adds the term “van rental”, which describes Complainant’s licensees’ business. It is a recognized principle that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds generic words that correspond to the Complainant's activity.

2. Right to or Legitimate Interests.

According to §4(a)(ii) of the Policy, the following facts if proved, attest to the Respondent's rights or legitimate interests in a

domain name:

(i) the fact that before any notice of the dispute, the domain name's registrant has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the fact that the domain name's registrant has been commonly known by the domain name, even without acquisition of trademark or service mark rights; or

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

None of the three circumstances mentioned above is present in the case at issue.

The domain name enterprisevanrental.com resolves to a website corresponding to a generic web page commonly used by domain name owners seeking to “monetize” their domain names through “click-through” fees. The disputed domain name resolves to a web page carrying the heading “Enterprisevanrental.com.” Beneath that heading are the following “Related Searches”:

Rental Car
Vehicle Rental
Van Hire
Cargo Van Rental
15 Passenger Van Rental
Cargo Van Rentals One Way
Hertz Rental
Car Rental Canada

Clicking on any of the links listed above takes the user to another web page unrelated to the Complainant that includes further links to many of Enterprise Rent-A-Car’s competitors.

This use of the enterprisevanrental.com domain name is neither a bona fide offering of goods or services pursuant to §4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to §4(c)(iii) of the Policy .

In light of the long-standing use and registration of the ENTERPRISE mark in connection with vehicle rental services, including van rental services, and in the absence of any contrary objection by the Respondent, the Panel concludes that the Respondent was well aware of the Complainant's mark at the time of the registration of the disputed domain name. The fact that the disputed domain name resolves to a website including several references to the Complainant's principal competitors is clear evidence of the fact that when the enterprisevanrental.com domain name was registered, the Respondent was well aware of the existence of Complainant’s rights in the ENTERPRISE mark in connection with vehicle rental services.

The Complainant has not licensed or otherwise permitted the Respondent to use the ENTERPRISE mark (or variations thereof) in connection with vehicle rental or van rental services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE mark. In addition, the Respondent is clearly not making any legitimate noncommercial or fair use of enterprisevanrental.com. In fact, any claim in that regard is easily dismissed since the web page to which the enterprisevanrental.com domain name resolves is a generic web page commonly used by domain name owners seeking to “monetize” their domain names through “click-through” fees.

Finally, there is nothing to indicate that the Respondent is commonly known as “Enterprise Van Rental” and the Complainant never authorized the Respondent to the registration and use of a domain name containing its ENTERPRISE mark.

In the light of the above, the Panel concludes that the Respondent lacks rights or legitimate interests in the disputed domain name.

3. Registered and Used in Bad Faith.

Paragraph 4(a)(iii) of the Policy lists a series of circumstances that, if proved, constitute evidence of registration and use of a domain name in bad faith. Among these, under para. 4(b)(iv) of the Policy,the fact that if by using the domain name, the domain name's holder has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the domain name holder's web site or location, or of a product or service on the web site or location, is evidence of bad faith.

The Panel finds that the Respondent registered and is using the enterprisevanrental.com domain name, with a clear intent to trade upon the goodwill associated with the Complainant’s mark for vehicle rental services, including van rental services. As already mentioned above, the disputed domain name leads to a so-called “parking page” designed for the sole purpose of generating “click-through” fees.

A review of the web page makes it very clear that the Respondent set up the web site with a view to commercial gain from “click-through” payments from Internet users seeking the Complainant's vehicle rental web site. Although some visitors may realize that they are not on the Complainant’s web page, there must inevitably be a number of who do “click through.” The very essence of setting up the web site to which the enterprisevanrental.com domain name resolves must be that it does result in commercial gain from Internet users accessing the links through the web site to which the enterprisevanrental.com domain name resolves.

Therefore, the Panel concludes that the domain name enterprisevanrental.com was registered and is being used in bad faith.

The business model based upon use of a domain name such as the enterprisevanrental.com domain name to attract users to a web site unrelated to the Complainant’s own is clear evidence that the Respondent registered and is using the enterprisevanrental.com domain name at issue in bad faith pursuant to § 4(b)(iv) of the Policy.

For all the aforementioned reasons, the Panel concludes that the domain name enterprisevantrental.com was registered and is 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. **ENTERPRISEVANRENTAL.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2013-10-11

Publish the Decision