Decision for dispute CAC-UDRP-100933

Case number	CAC-UDRP-100933
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Domain names	enterprisecardone.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Oneandone Private Registration c/o 1&I Internet Inc. - www.1and1.com

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following European Community Trademark Registrations:

Community Trademark No. 006301031 registered on August 8, 2008 for ENTERPRISE in International Classes 12, 36, and 39.

Community Trademark No. 000036384 registered on December 1, 1998 for ENTERPRISE in International Classes 12, 36, and 39.

The Complainant is also the record owner of the following registrations for the relevant marks in the United States:

United States Registration No. 1,343,167 issued on June 18, 1985 for ENTERPRISE in International Classes 35, 39, and 42.

United States Registration No. 2,458,529 issued on June 5, 2001 for ENTERPRISE.COM in International Class 39.

FACTUAL BACKGROUND

The Complainant contends and submits evidence thereof that as of the date of the commencement of this proceeding,

according to the WHOIS record, the owner of the disputed domain name enterprisecardone.com, was Oneandone Private Registration and the Registrant Organization 1 & 1 Internet Inc. – www.1and1.com.

[I]t would be against the spirit and the essence of the system to oblige the Complainant to file a new Complaint or an 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.

Furthermore, the Complainant expects that once notified of the complaint, the current record owner of the disputed domain name likely will instruct its Registrar to disclose another owner of the domain name at issue. In that regard the Complainant mentions decision Vanguard Trademark Holdings USA LLC, v. WanZhongMedia c/o Wan Zhong, No. 100221 and states it does not believe that it should be required to file an amended complaint once the Registrar "draws back the curtain" to reveal the real owner of the disputed domain name.

Complainant's Business:

The Complainant is the owner of the ENTERPRISE and ENTERPRISE.COM marks ("ENTERPRISE marks"), which licenses to various Enterprise Rent-A-Car operating companies.

Started in the United States in 1974, ENTERPRISE is now an internationally recognized brand serving the daily car rental needs of customers throughout the United States, Canada, Ireland, Germany and the United Kingdom. Complainant's affiliated companies have been offering vehicle rental services under the ENTERPRISE mark in the United Kingdom since 1994, in Germany since 1997 and in Ireland since 1998. There are currently:

• More than 150 Enterprise Rent-A-Car branches in Germany;
• More than 340 Enterprise Rent-A-Car branches in the UK, including branches at Heathrow and Gatwick airports;
• More than 25 Enterprise Rent-A-Car branches in Ireland.

Complainant's affiliated companies employ more than 4,000 people in the European Union and have more than 60,000 rental vehicles in their "fleet" in Europe.

The Enterprise Rent-A-Car operating companies have on-line rental car sites at www.enterprise.co.uk, www.enterprise.de, www.enterprise.ca, www.enterprise.com, and www.enterprisecar.eu.

1. Confusing similarity.

According to the Complainant, its registration and extensive use of the ENTERPRISE marks for car rental services sufficiently establish its right in the marks pursuant to Paragraph 4(a)(i) of the ICANN's Uniform Dispute Resolution Policy (hereinafter "Policy").

The domain name enterprisecardone.com is confusingly similar to Complainant's registered ENTERPRISE mark. The enterprisecardone.com domain name fully incorporates Complainant's ENTERPRISE mark, merely adding the term "car," which is descriptive of Complainant's business, the generic term "done," and the generic top level domain identifier, ".com." The enterprisecardone.com domain name is also confusingly similar to Complainant's registered ENTERPRISE.COM mark in that it fully incorporates the mark, merely adding the term "car," which is descriptive of Complainant's business, and the generic term "done".

The incorporation of a trademark in its entirety into a domain name is sufficient to establish that the domain name is identical or confusingly similar to a registered trademark.

It is also well established that combining a mark with terms that describe Complainant's business is an inadequate change

to prevent confusing similarity.

The addition of the generic term “done” does not distinguish the enterprisecardone.com domain name from Complainant’s ENTERPRISE marks. It is well settled that the addition of generic terms to a mark in a domain name does not distinguish that domain name from the mark.

The addition of a generic top level domain identifier is also insufficient to distinguish the enterprisecardone.com domain name from Complainant’s ENTERPRISE marks.

Moreover, the Complainant emphasizes that its registrations for the ENTERPRISE marks pre-date the May 2014 initial registration of the enterprisecardone.com domain name by many years.

2. Rights or Legitimate Interests.

The Respondent has no rights or legitimate interests in the enterprisecardone.com domain name. The Complainant submits evidence that on January 27, 2015, the web site at the enterprisecardone.com domain name resolved to a web page with a list of “Sponsored Listings” which contained links to web sites offering car rental services, including those of the Complainant and its competitors, as well as links to web sites unrelated to the Complainant.

In light of the long-standing use and registration of the ENTERPRISE marks by the Complainant in connection with car rental services, the Respondent cannot have any legitimate rights in the enterprisecardone.com domain name in connection with a site that serves merely to drive Internet traffic to web sites offering car rental services, including those of the Complainant and its competitors, as well as web sites unrelated to the Complainant.

Respondent’s use is neither a bona fide offering of goods or services pursuant to Paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use pursuant to Paragraph 4(c)(iii) of the Policy.

The WHOIS record list “Oneandone Private Registration” as Registrant and “1 & 1 Internet Inc. – www.1and1.com” as Registrant Organization for the enterprisecardone.com domain name. The web site to which the enterprisecardone.com domain name resolves gives no indication that the Respondent is known as, operating a business as, or advertising as “Enterprise Car Done.” Previous panels have found that, in the absence of evidence submitted by a respondent, the WHOIS record is the sole piece of relevant evidence when determining what a respondent is commonly known as. Therefore, the Complainant concludes that the Respondent has not been commonly known by the disputed domain name so as to have acquired rights to or legitimate interests in it within the meaning of Paragraph 4(c)(ii) of the Policy.

According to the Complainant, these facts suggest that the Respondent is not known as or operating as “Enterprise Car Done,” but instead is attempting to use the goodwill generated by the ENTERPRISE marks to drive Internet traffic to its web site through use of a confusingly similar domain name.

The Complainant states it has not licensed or otherwise permitted the Respondent to use its ENTERPRISE marks in connection with car rental services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE marks. In addition, the Respondent is clearly not making any legitimate noncommercial or fair use of enterprisecardone.com. In fact, any claim in that regard is easily dismissed since the enterprisecardone.com web page is a generic type of web page commonly used by domain name owners seeking to monetize their domain names through “click-through” fees.

As previously indicated Complainant’s licensee operates online car rental web sites at www.enterprise.co.uk, www.enterprise.de, www.enterprise.ca, www.enterprise.com, and www.enterprisecar.eu. It is clear that the Respondent has no legitimate rights in the enterprisecardone.com domain name and, by the use of a confusingly similar domain name, is attempting to use the enterprisecardone.com domain name to drive Internet traffic to its enterprisecardone.com web site when Internet users are trying to reach an Enterprise Rent-A-Car web site. Such use constitutes a lack of rights or legitimate interest in the disputed domain name under Paragraphs 4(c)(i) and (ii) of the Policy.

3. Registered and used in bad faith.

The record clearly supports a finding that the Respondent both registered and is using the enterprisecardone.com domain name in bad faith. Respondent's registration of a domain name that merely adds a term descriptive of Complainant's business and a generic term to Complainant's ENTERPRISE marks for a web site that attempts to attract Internet users to Respondent's web page, evidences a clear intent to trade upon the goodwill associated with Complainant's ENTERPRISE marks for car rental services. The Respondent is deliberately using a domain name that is confusingly similar to Complainant's marks to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites and the services offered at such web sites. The web page at enterprisecardone.com also contains a link to Complainant's licensee's web site at enterprise.com under its "Sponsored Listings" making confusion all the more likely.

The web page to which the enterprisecardone.com domain name resolves is a "pay-per-click" web page. It contains online advertising that will provide someone, presumably the Respondent, with revenue from "click-through" fees from Internet users who find their way to the web page at enterprisecardone.com. At least some Internet visitors to Respondent's web page at enterprisecardone.com will either not realize that they have been unwittingly directed to a web site that has no affiliation to Enterprise Rent-A-Car or not care that they are not at an "official" Enterprise Rent-A-Car web site and will "click through" the links provided by the Respondent.

The business model based upon use of an infringing domain name to attract users to Respondent's web site is clear evidence that the Respondent registered and is using the enterprisecardone.com domain name in bad faith pursuant to Paragraph 4(b)(iv) of the Policy.

Respondent's bad faith is also clearly evident from the fact that the web page for enterprisecardone.com includes a link to a real Enterprise Rent-A-Car web page at enterprise.com and for which the Enterprise Rent-A-Car operating company must pay a click-through fee if that link is used. In addition, the link to Enterprise Rent-A-Car on enterprisecardone.com contains the ® symbol, indicating a registered trademark.

The Respondent may claim ignorance regarding the use being made of the enterprisecardone.com domain name. However, under the UDRP, absent a showing of some good faith attempt prior to receiving the UDRP complaint, to stop the inclusion of advertising or links which profit from trading on third-party trademarks, a domain name owner will be deemed responsible for content appearing on the web site at the domain names they own. This is true even if the owner is not exercising direct control over such content - for example, in the case of advertising links appearing on an "automatically" generated basis, such as may be the case here. No matter how it is viewed, the very essence of setting up the enterprisecardone.com web site must be that it does result in commercial gain from Internet users accessing other web sites through the enterprisecardone.com web site.

From the above it is clear that Respondent's registration and use of the enterprisecardone.com domain name fulfil requirements of Paragraph 4(b)(iv) of the Policy.

Finally, the Complainant summarizes that it cannot be disputed that the Complainant has well-recognized rights and goodwill in its ENTERPRISE and ENTERPRISE.COM marks in connection with car rental services. The enterprisecardone.com domain name is confusingly similar to Complainant's ENTERPRISE and ENTERPRISE.COM marks. The Respondent has no legitimate rights in the enterprisecardone.com domain name. The Respondent has merely registered the enterprisecardone.com domain name to capitalize on the goodwill that the Complainant has developed in its ENTERPRISE and ENTERPRISE.COM marks to drive Internet traffic inappropriately to other web sites for commercial gain.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. But after the notification of the Respondent's default, the Respondent expressed via a non standard communication his "desire to transfer immediately domain enterprisecardone.com to the Complainant and close case."

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

At the time of the commencement of this proceeding, the owner of the record of the disputed domain name was Oneandone Private Registration c/o 1&1 Internet Inc. - www.1and1.com. As the Complainant correctly predicted, once notified of the Complaint, the Registrar disclosed another owner for the disputed domain name Marisol Cuevas. The Complainant preferred not to change the Respondent's name in the Complaint based on the arguments of CAC decision No. 100221. The Panel finds that from the procedural point of view it would be inappropriate to ask the Complainant to amend its complaint in that regard.

Otherwise, 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 disputed domain name is confusingly similar to the Complainant's registered trademarks since it incorporates the Complainant's mark "ENTERPRISE", merely (i) adding descriptive term "CAR" , (ii) generic term "DONE", and (ii) the generic top level domain identifier ".com" at the end. Adding such a generic term as "DONE" or descriptive term as "CAR" does not distinguish the disputed domain name from the Complainant's trademarks. Therefore, the Panel finds that the disputed domain name "ENTERPRISECARDONE.COM" is confusingly similar to the Complainant's trademarks.

The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, neither of the domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the disputed domain name, and is not commonly known under the disputed domain name.

The Panel notes that the website under the domain name "ENTERPRISECARDONE.COM" resolves to a web page with a list of sponsored listings, which contains links to websites offering car rental services. In light of the long-standing use and registration of the ENTERPRISE marks by the Complainant in connection with car rental services, the Respondent cannot have any legitimate rights in the domain name "ENTERPRISECARDONE.COM" in connection with a site that serves merely to drive Internet traffic to web sites offering car rental services.

In lack of any administratively compliant 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 "ENTERPRISECARDONE.COM".

The Complainant also proves that the Respondent registered and is using the domain name in bad faith.

The web page to which the enterprisecardone.com domain name resolves is a "pay-per-click" web page. It contains online advertising that will provide someone, presumably the Respondent, with revenue from "click-through" fees from Internet users who find their way to the web page at enterprisecardone.com. At least some Internet visitors to Respondent's web page at enterprisecardone.com will either not realize that they have been unwittingly directed to a web site that has no affiliation to Enterprise Rent-A-Car or not care that they are not at an "official" Enterprise Rent-A-Car web site and will "click

through" the links provided by the Respondent. Respondent's bad faith is also evident from the fact that the web page for enterprisecardone.com includes a link to a real Enterprise Rent-A-Car web page at enterprise.com and for which the Enterprise Rent-A-Car operating company must pay a click-through fee if that link is used. In addition, the link to Enterprise Rent-A-Car on enterprisecardone.com contains the ® symbol, indicating a registered trademark.

These facts, including the absence of a Response, prove the bad faith of the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ENTERPRISECARDONE.COM**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2015-04-13

Publish the Decision