Decision for dispute CAC-UDRP-101299

Case number	CAC-UDRP-101299
Time of filing	2016-09-26 09:57:00
Domain names	gregandenterprisecars.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	EnterpriseCarSales

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant (i.e. Enterprise Holdings, Inc.) is the owner of the European Union Trademark (figurative) No. 005323118 registered on 27 September 2007 (which includes word “ENTERPRISE”) in International Classes 12, 35, 37 and 39. The services in Class 35 include “Vehicle dealership services.”

Furthermore, the Complainant is the record owner of the numerous registrations for the relevant marks in the United States (i.e. word trademark “ENTERPRISE” No. 1,343,167 registered on 18 June 1985 in international classes 35, 39 and 42).

FACTUAL BACKGROUND

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

The Complainant is the largest car rental service provider in the world, as measured by revenue, employees, and fleet. Started in the United States in 1957, the Complainant is now the largest vehicle rental service provider in the world, as measured by revenue, employees, and fleet size. Enterprise serves the daily car rental needs of customers throughout the United States, Canada, Ireland, Germany, Spain and the United Kingdom. Complainant’s affiliated companies have been

offering vehicle rental services in the United Kingdom since 1994, in Germany since 1997, and in Ireland since 1998. More recently Enterprise began renting cars in Spain. Enterprise and its affiliated companies employ more than 74,000 people worldwide and own almost 1.3 million cars and trucks. 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 disputed domain name was registered on 21 July 2016.

The Complainant claims that its registrations and extensive use of the ENTERPRISE, ENTERPRISE RENT-A-CAR, and ENTERPRISE CAR SALES marks (the "ENTERPRISE marks") sufficiently establish its rights in the marks pursuant to paragraph 4(a)(i) of the ICANN's Uniform Dispute Resolution Policy (hereinafter the "Policy").

According to the Complainant, the disputed domain name <gregandenterprisecars.com> is confusingly similar to its registered ENTERPRISE marks. The disputed domain name fully incorporates the ENTERPRISE mark, merely adding the common name "greg," the conjunctive "and," the term "cars" describing Complainant's business, and the top level domain identifier ".com". The <gregandenterprisecars.com> domain name is also confusingly similar to Complainant's ENTERPRISE RENT-A-CAR and ENTERPRISE CAR SALES marks in for it fully incorporates the ENTERPRISE and CAR portions of the marks, merely making "Car" plural, eliminating the spaces between the words, and adding the common name "greg", the conjunctive "and", and the top level domain identifier ".com".

The Complainant contends that the addition of a common name, such as "greg", does not distinguish the disputed domain name from Complainant's ENTERPRISE marks. In that regard the Complainant relies on case State Farm Mutual Automobile Insurance Company v. New Ventures Services, Corp, FA 1511001647714 (FORUM Dec. 17, 2015).

Furthermore, the Complainant claims that the addition of the conjunctive "and" does not distinguish the disputed domain name from Complainant's ENTERPRISE marks.

The Complainant states that the Respondent can have no rights or legitimate interests in the disputed domain name. The Complainant has not licensed, authorized, or permitted the Respondent to use Complainant's ENTERPRISE marks in any manner or apply for any domain name incorporating the ENTERPRISE marks.

The Complainant contends that the Respondent, Gregory Morehouse, is a former employee of Enterprise Car Sales and was not authorized to register the disputed domain name. According to the Complainant, it is well settled that a former employee has no legitimate rights in a domain name that is confusingly similar to his former employee's trademark and that was registered without authorization even if such registration was during employment. In that regard the Complainant relies on cases Ruby's Diner v. Joseph W. Popow. D2001-0868 (WIPO Aug, 29, 2001), State Farm Mutual Insurance Co. v. Reger, FA95651 (Nat. Arb. Forum November 14, 2000) and Weekley Homes v. Wilsher Co., FA95331 (Nat. Arb. Forum September 2, 2000).

The Complainant claims that the use of the disputed domain name clearly appears to be an attempt to mimic an authorized Enterprise Car Sales web site and will confuse users as to the source and owner of the web site. Such an attempt by the Respondent to pass himself off as Enterprise Car Sales is evidence that the Respondent is not making a bona fide offering or legitimate use.

The facts of record clearly support a finding that the Respondent both registered and is using the disputed domain name in bad faith. The mere act of registration and use of the disputed domain name constitute bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Complainant states that in light of Respondent's status as a former employee of Enterprise Car Sales, the Respondent registered the disputed domain name with full knowledge of Complainant's rights in the ENTERPRISE marks.

The Complainant claims that it is clear from Respondent's choice of the disputed domain name and the use of Complainant's trademarks on the web page that the Respondent is trying to impersonate Complainant or misrepresent an

affiliation with Complainant's licensees. The Respondent has used the exact ENTERPRISE denomination with stylized green "e" mark on the <gregandenterprisecars.com> web page that the Complainant has registered as well as Complainant's HAGGLE-FREE BUYING. WORRY-FREE OWNERSHIP. mark.

For the reasons stated above the Complainant concludes that it cannot be disputed that the Complainant has long standing and well-recognized rights and goodwill in its ENTERPRISE, ENTERPRISE RENT-A-CAR, and ENTERPRISE CAR SALES marks that pre-date Respondent's ownership of the disputed domain name. The disputed domain name is confusingly similar to Complainant's ENTERPRISE, ENTERPRISE RENT-A-CAR and ENTERPRISE CAR SALES marks. The Respondent has no legitimate rights in the disputed domain name. The Respondent has registered and is using the disputed domain name in bad faith to capitalize on the goodwill that the Complainant has developed in its ENTERPRISE, ENTERPRISE RENT-A-CAR, and ENTERPRISE CAR SALES marks to drive Internet traffic inappropriately to other web sites.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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.

PRINCIPAL REASONS FOR THE DECISION

1. The main issues under the UDRP are whether:

i. the domain name in dispute is identical or confusingly similar to a domain name or a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the domain name; and

iii. the domain names has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Panel also visited all available websites and public information concerning disputed domain name, namely the WHOIS database and related trademark register databases.

3. The Rules for Uniform Domain Name Dispute Resolution Policy clearly stipulate in paragraph 3 that any person or entity may initiate an administrative proceeding by submitting a Complaint in accordance with the Policy describing according to para (ix), sub para (iii) why the domain name(s) should be considered as having been registered and being used in bad faith.

4. The panel therefore came to the following conclusions:

Domain name to be identical or confusingly similar

a) It is also clear and proven that there is a similarity between some trademarks of the Complainant and the disputed domain name as to the phonetic similarity, optical similarity; conceptual/intellectual similarity. It is constantly decided not only in proceedings at this body but also at WIPO that adding a letter, number, any figure, prefix or an added part of the domain name to the original trademark is not enough to make a distinction to another original trade mark and/or domain name.

Respondent not having rights or legitimate interest with respect to the disputed domain name

b) The Complainant has clearly proven that it has long standing rights in the mark “ENTERPRISE” and its variations. The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interest in respect of the disputed domain name and as the Respondent was never authorized to use the domain name by the Complainant. The Respondent, in the absence of any response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant has not licenced or otherwise permitted the Respondent to use Complainant ´s marks in the disputed domain name. On the basis of evidence submitted and in the absence of Response the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Domain name has been registered and is used in bad faith

c) The Uniform Domain Names Dispute Resolution Policy in its paragraph 4 defines what has to be understood as an evidence of the registration and use of the domain name in bad faith. Particularly paragraph 4(b)(iv) of the Policy has to be considered in this case.

It was proven that the Respondent has registered the disputed domain name only after the confusingly similar trademarks of the Complainant had been registered and properly used for a long time in business. It is therefore clear that there is a high probability of a speculative behaviour of the Respondent. On top of that it was not proven that the owner of the disputed domain name is active in business and therefore this based on the previous decision and practice of the arbitrators may lead to the conclusion that the use of the disputed domain name is speculative by the Respondent. It has to be stressed that the Respondent was even an employee of the Complainant.

Therefore it has to be concluded that the Respondent has registered/acquired the disputed domain names primarily for the purpose of his own benefit when disrupting the business of the Complainant and therefore the Respondent is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **GREGANDENTERPRISECARS.COM**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2016-11-10

Publish the Decision