Decision for dispute CAC-UDRP-101518

Case number	CAC-UDRP-101518
Time of filing	2017-04-28 11:11:40
Domain names	enterprisecarssale.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	ALTADOX c/o Jo Ann Daley

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registrations for the mark ENTERPRISE CAR SALES in the United States of America:

Registration No. 2,052,193 issued April 15, 1997
“e” (Stylized) ENTERPRISE CAR SALES (“Car Sales” disclaimed) in International Class 42 for “automobile dealership services”

Registration No. 4,061,596 issued November 22, 2011
ENTERPRISE CAR SALES (stylized) (“Car Sales” disclaimed) in International Class 35 for “vehicle dealership services”

Registration No. 4,064,802 issued November 29, 2011
ENTERPRISE CAR SALES (stylized) (“Car Sales” disclaimed) in International Class 35 for “vehicle dealership services”

FACTUAL BACKGROUND

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

FACTUAL AND LEGAL GROUNDS

The Complainant licenses its ENTERPRISE CAR SALES mark to Enterprise Car Sales. Starting in 1962, Enterprise Car Sales now has more than 130 locations across the United States and has sold more than one million vehicles. The Complainant's licensee operates an online car sales site at "www.enterprisecarsales.com".

The disputed domain name was registered on March 31, 2017. It does not resolve to an active web page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

The Complainant has shown that it has rights in the United States registered mark ENTERPRISE CAR SALES for vehicle dealership services. The disputed domain name is confusingly similar to that mark, since it merely changes "car" to "cars" and "sales" to "sale" and adds the inconsequential generic top level domain identifier, ".com".

As to legitimacy, the disputed domain name does not resolve to an active web page. Since it has been registered for such a short time, this alone is insufficient to establish absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. However, when taken into account together with the absence from the WHOIS record of anything to indicate that the Respondent is commonly known as "Enterprise Cars Sale," I conclude that the Respondent has not been commonly known by this name.

The Complainant asserts that it has not licensed or otherwise permitted the Respondent to use its ENTERPRISE CAR SALES mark or any similar term in connection with any goods or services or to apply for any domain name incorporating that mark and any similar term; and that the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name. These assertions suffice to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy 4(a)(ii). Accordingly, the burden shifts to the Respondent to show it does have rights or legitimate interests. The Respondent has made no attempt to do so and I therefore find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As to bad faith, according to paragraph 3.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, "[p]anels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa."

In the present case, I am satisfied that the Complainant's trademark is well-known and widely used in the United States and that the registration of the disputed domain name by the Respondent, having an address in the United States, was for the purpose of attracting, for commercial gain, Internet users to a future website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of that website and any goods or services offered at such website.

Further, since the Respondent registered the disputed domain name using a privacy service. In a commercial context, this raises a rebuttable presumption of bad faith. See Capital One Financial Corp. v. DCH, FA 487835 (FORUM April 9, 2013) (concluding that "the fact Respondent originally registered the domain name with a privacy service in a commercial context raises the rebuttable presumption of bad faith registration and use…That fact alone sufficiently demonstrates bad faith registration and use). The Respondent has made no attempt to rebut that presumption.

I therefore conclude that the Respondent has registered and 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. **ENTERPRISECARSSALE.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2017-05-30

Publish the Decision