Decision for dispute CAC-UDRP-101573

Case number	CAC-UDRP-101573
Time of filing	2017-06-27 09:13:53
Domain names	enterprisecarsales.pro

Case administrator

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

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Eric Shaw

OTHER LEGAL PROCEEDINGS

To the best knowledge of the Panel, there is no other pending or decided legal proceedings in connection with the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, Enterprise Holdings, Inc., is the record owner of the following registrations for the relevant mark in the United States:

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

The Complainant, Enterprise Holdings, Inc., is the owner of the ENTERPRISE CAR SALES mark for vehicle dealership services, which it licenses to Enterprise Car Sales. Started in 1962, Enterprise Car Sales now has more than 130 locations across the United States and has sold more than one million vehicles. Complainant's licensee operates an online car sales site at enterprisecarsales.com.

The disputed domain name was registered on 05 June 2017. Complainant's first registration for ENTERPRISE CAR SALES was issued on 15 April 1997 and pre-dates the registration of the disputed domain name by more than twenty years. Complainant's second and third registrations for ENTERPRISE CAR SALES were issued in November 2011 and pre-date the registration of the disputed domain name by more than five years.

As of the date of the filing of the Complaint, the disputed domain name was owned of record by Registrant Name "WhoisGuard Protected" and Registrant Organization "WhoisGuard, Inc.". Subsequent to the filing of the Complaint in this matter, according to the Registrar Verification, ownership of the disputed domain name was changed to "Eric Shaw."

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 Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable (Paragraph 15 of the Rules).

Thus for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

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

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3. The disputed domain name has been registered and is being used in bad faith.

Identity or confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant

is the holder of the ENTERPRISE CAR SALES stylized trademark, which is used in connection with its business, it is established that there is a trademark in which the Complainant has rights.

It is also noticed that the Complainant has registered and is using, among others, the domain name <enterprisecarsales.com> since years.

The Panel considers the disputed domain name <enterprisecarsales.pro> is identical to the ENTERPRISE CAR SALES trademark.

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

The Complainant has the burden of establishing that Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent.

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. Respondent’s use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between Complainant and Respondent existed.

In the circumstances of this case, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The use made after the registration of the disputed domain name shows that the Respondent tried to pass himself off as the Complainant, since Complainant provided screenshot dated June 16, 2017 where the domain name in issue resolved a website that is identical to the Complainant's. At the time of this decision the disputed domain name points to a qualified parking page displaying pay per links in connection with Complainant's activities.

The Respondent did not reply to the Complaint.

The Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

Policy Paragraph 4(b) provides a non-exclusive list of factors, any one of which may demonstrate bad faith registration and use, namely:

(i) circumstances indicating that the domain name is registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name (Policy Paragraph 4(b)(i));

(ii) the registration of a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct (Policy Paragraph 4(b)(ii));

(iii) the registration of a domain name primarily for the purpose of disrupting the business of a competitor (Policy Paragraph 4(b)(iii)); and

(iv) the use of a domain name for intentionally attempting to attract, for commercial gain, Internet users to a 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 Respondent’s web site or location or of a product or service on Respondent’s web site or location (Policy Paragraph 4(b)(iv)).

According to the Panel, where a domain name is so obviously connected with a trademark, its very use by someone with no connection to the trademark suggests opportunistic bad faith (See LEGO Juris A/S v. store24hour; WIPO Case No. D2013-0091).

In the present case, the Respondent’s awareness of the Complainant is not only apparent from the reputation of the Complainant’s trademark; it also results from the fact that the disputed domain name used to resolve a website that reproduces Complainant's website. The Respondent’s impersonation attempt was unmistakably for scamming purposes and is clear evidence of bad faith use of the disputed domain name.

Now the diputed domain name is pointing to a parking webpage including ppc links which evidences a clear intent on the part of the Respondent to use the disputed domain name to trade upon the goodwill associated with Complainant’s ENTERPRISE CAR SALES mark.

Respondent's only purpose in registering the disputed domain name that is confusingly similar to Complainant’s mark will be to attract, for commercial gain, Internet users to its web site, by creating a likehood 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.

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ENTERPRISECARSALES.PRO**: Transferred

PANELLISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2017-08-09

Publish the Decision