Decision for dispute CAC-UDRP-100221

Case number	CAC-UDRP-100221
Time of filing	2011-02-08 15:40:35
Domain names	NATIONALRENTELCAR.COM, INTERPISECARRENTAL.COM

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Vanguard Trademark Holdings USA LLC
Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	WanZhongMedia c/o Wan Zhong

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

First Complainant, Vanguard Trademark Holdings USA LLC, is the record owner of the (notably) following registrations for the NATIONAL and NATIONAL CAR RENTAL marks in the European Community:

- Registration No. 000190413 application date 1 April 1996, issued 06 June 2002 for NATIONAL for “automobile rental and reservation services in International Class 39.”

- Registration No. 000190439 application date 1 April 1996, issued 12 March 2003 for NATIONAL CAR RENTAL for “automobile rental and reservation services in International Class 39.”

Second Complainant, Enterprise Holdings, Inc., has registered its ENTERPRISE mark and owns (notably) the following European Community registrations:

- European Community Trademark Registration No. 36384 dated 1 December 1998 for ENTERPRISE in Classes 12, 36 and 39, including “Vehicle rental services.”

- European Community Trademark Registration No. 6301031 dated 8 August 2008 for ENTERPRISE in Classes 35 and 37, including “Vehicle dealership services.”

FACTUAL BACKGROUND

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

PROCEDURAL ISSUE

Although Complainant has amended the Complaint to add the owner of the domain names at issue to reflect the owner as per the Registrar Verification, it should be noted that the owner shown in the Registrar Verification was not the Registered Name Holder at the time this proceeding was initiated. The Registrar unilaterally changed the Registered Name Holder from "WhoisPrivacy Limited" to Wanzhongmedia c/o Wan Zhong after it had received notice of the initiation of this proceeding.

To insure compliance with the letter and spirit of the Uniform Domain Name Dispute Resolution Policy and the ICANN requirement that WHOIS data include the correct and up-to-date contact information for the Registered Name Holder, Complainant requests that this action be allowed to proceed against the Registered Name Holder of the domain names at issue at the time this UDRP action was initiated.

In the event that there is a substantive decision in this matter, Complainant respectfully requests that the Panelist appointed to decide this matter make clear that future UDRP Complainants will not be required to incur the expense and delay of filing an amended Complaint when a Registrar unilaterally changes the WHOIS information regarding the Registered Name Holder after and in response to the initiation of a UDRP complaint.

At the time this UDRP action was initiated, the WHOIS records for both domain names at issue in this matter indicated the Registered Name Holder to be “WhoisPrivacy Limited.“

Paragraph 3(b)(v) of the Rules requires that a Complainant filing a UDRP complaint:

“Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a).”

By filing the complaint against the Respondent identified in the WHOIS records, Complainant met its obligation under Paragraph 3(b)(v) of the Rules 5.6. The term “Respondent” is not specifically defined in the Policy. “Respondent” is defined in the Rules as “the holder of a domain-name registration against which a complaint is initiated”. However, the Rules contain no definition of who is “the holder of the domain-name registration” for these purposes.

The answer to that question should be that the Respondent it is prima facie the entity that is recorded as the Registered Name Holder in the registrar’s register as revealed by a WHOIS at the time the UDRP complaint is initiated.

To avoid “cyberflight” and other practices used to circumvent the UDRP, Paragraph 8 of the Policy makes clear that a domain name cannot be transferred “during a pending administrative proceeding to Paragraph 4 [of the Policy]”.

Paragraph 4 of the Policy states that “the process for initiating and conducting a proceeding” is set out in the Rules. Paragraph 3 of the Rules states that “Any person may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules”. While paragraph 4(c) of the Rules states that the date of commencement of the proceedings is the date upon which the Czech Arbitration Court is satisfied that the Complaint was in compliance with the Policy, it defies both logic and the Rules to take the position that the administrative proceeding was not “pending” during the review for administrative compliance.

The practice of the Czech Arbitration Court is to send an email to the relevant registrar seeking (among other things) confirmation that the Registered Name Holder - Respondent is correctly identified should continue. If the Registrar identifies some other person or entity as the Registered Name Holder the Czech Arbitration Court can advise a Complainant of this fact and invite it to amend its complaint accordingly. If the Complainant has made an error in the Complaint or if after drafting the Complaint but before the Complaint is sent to the Czech Arbitration Court, the name of the Registered Name Holder changes, an amendment of the Complaint would be necessary.

If, however, the Registered Name Holder is merely being used to "mask" the real owner and the identity of the Registered Name Holder has not changed, the Complainant should not be required to incur the expense and delay of amending the Complaint which correctly identified the Registered Name Holder at the time the UDRP proceeding was initiated.

WHOIS privacy services should be held accountable for their actions in shielding the identity of cybersquatters. In assuming the role of Registered Name Holder of a domain name and for which it receives a fee, a WHOIS privacy service must also assume the rights and responsibilities as the Registered Name Holder and should not be allowed to circumvent the UDRP and UDRP Rules to avoid the liability it has assumed by becoming the Registered Name Holder. Unlike a Registrar, who merely registers a given domain name, a WHOIS privacy service is an active participant with its customer in shielding the identity of the domain name owner by itself becoming the Registered Name Holder.
Therefore, Complainant requests that the Registrar's unilateral transfer of ownership of the domain names at issue once the complaint was filed in this matter should be disregarded and this proceeding should proceed as filed against the Registered Name Holder as shown in the WHOIS records as the time the Complaint was filed with the Czech Arbitration Court or in the alternative to proceed against both WhoisPrivacy Limited and WanZhongMedia c/o Wan Zhong.

FACTUAL AND LEGAL GROUNDS. ICANN Rule 3(b)(ix).

This is a Class Complaint filed on behalf of (1) Vanguard Trademark Holdings USA LLC and (2) Enterprise Holdings, Inc. and is filed pursuant to Paragraph 4, Art. 3 of the Supplemental Rules in that it is:

Based on legal arguments applicable equally, or substantially in the same manner, to both of the disputed domain names;

The person representing both Complainants joined in the Class Complaint is authorized to act on behalf of each of the Complainants; and

The Panel can order transfer of any of the disputed domain name(s) only to the individual Complainant on which behalf such transfer is requested in the Class Complaint, in accordance with the Policy.

The representative filing this Complaint has filed numerous UDRP actions upon behalf of each Complainants as well as jointly, and is authorized to act upon behalf of both Complainants and, if necessary, will provide written authorization in that regard.

As of the date of Complainants' commencement of this proceeding, the two domain names at issue, nationalrentelcar.com and interpisecarrental.com are both owned of record by the same entity, WhoisPrivacy Limited. Subsequent to notice of the initiation of this action, the Registrar unilaterally, in response to a request from the Registered Name Holder at the time this action was initiated (WhoisPrivacy Limited) changed the WHOIS Information for both domain names for the Registered Name Holder owner to Wanzhongmedia c/o Wan Zhong. A copy of the email from WhoisPrivacy Limited to the Registrar and Registrar's Response regarding such requested change of the Registered Name Holder is attached as Annex 1A. Copies of the WHOIS records at the time the complaint was filed for both of these domain names from the records of the Registrar (Eurodns S.A.) for those domain names are attached as Annex 1 and Annex 2 respectively.

This Complaint is based on the following factual and legal grounds:

Vanguard Trademark Holdings USA LLC ("First Complainant ") is the owner of the NATIONAL and NATIONAL CAR RENTAL marks for vehicle rental services including car rental services, which are licensed to National Car Rental.

Started in 1948, National Car Rental is a premium, internationally recognized brand serving the daily car rental needs of the frequent airport business traveler throughout the United States, Canada, Mexico, the Caribbean, Europe, Latin America, Asia and the Pacific Rim. Since long prior to Respondent's registration of the nationalrentelcar.com domain name on 03 February 2008, First Complainant's licensee has been engaged in the rental car business under the NATIONAL and NATIONAL CAR RENTAL marks. First Complainant's licensee operates an on-line car rental site at nationalcar.com to which the nationalrentalcar.com domain name, owned by First Complainant, also resolves. A copy of the NATIONAL CAR RENTAL web page is attached as Annex 3.

Enterprise Holdings, Inc. ("Second Complainant ") is the owner of the ENTERPRISE and ENTERPRISE RENT-A-CAR marks which it uses in connection with its ENTERPRISE vehicle rental and used car sales business and which includes car rental services.

Since long prior to Respondent's registration of the interpisecarrental.com domain name on 27 July 2008, Second Complainant has been engaged in the car rental business under the ENTERPRISE and ENTERPRISE RENT-A-CAR marks. Second Complainant began renting cars in 1957 and has used the ENTERPRISE mark for car rental services in the United States since 1969. Second 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, Enterprise is a recognized leader in the vehicle rental business. Second Complainant expanded its car rental business to Europe in 1994 and has operations in the United Kingdom, Germany and Ireland. Second Complainant operates an on-line car rental site at enterprise.com to which the domain name enterprisecarrental.com also resolves. A copy of Second Complainant's ENTERPRISE car rental web page is attached as Annex 4.

Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

First Complainant, Vanguard Trademark Holdings USA LLC, is the record owner of the following registrations for the NATIONAL and NATIONAL CAR RENTAL marks in the European Community:

Registration No. 000190413 application date 1 April 1996, issued 06 June 2002 for NATIONAL for "automobile rental and reservation services in International Class 39."

Registration No. 000190439 application date 1 April 1996, issued 12 March 2003 for NATIONAL CAR RENTAL for "automobile rental and reservation services in International Class 39."

Copies of print-outs from the records of the Office for Harmonization of Internal Markets ("OHIM") showing the current status of each of these registrations are attached collectively as Annex 5.

First Complainant is the record owner of the following registrations for the relevant NATIONAL and NATIONAL CAR RENTAL mark in the United States:

Registration No. 1,537,711 issued 20 September 1988 for NATIONAL in International Class 39 for "automobile rental" (Secondary meaning shown).

Registration No. 1,540,913 issued 23 May 1989 for NATIONAL CAR RENTAL ("Car Rental" disclaimed) in International Class 39 for "automobile rental services."

Copies of print-outs from the records of the United States Patent and Trademark Office showing the current status of each of these registrations are attached collectively as Annex 6.

In addition to its registrations in the European Community and the United States, First Complainant has registered the NATIONAL and NATIONAL CAR RENTAL marks for vehicle rental services in many other countries.

Second Complainant, Enterprise Holdings, Inc., has registered its ENTERPRISE mark and owns the following European Community registrations:

European Community Trademark Registration No. 36384 dated 1 December 1998 for ENTERPRISE in Classes 12, 36 and 39, including “Vehicle rental services.”

European Community Trademark Registration No. 6301031 dated 8 August 2008 for ENTERPRISE in Classes 35 and 37, including “Vehicle dealership services.”

Copies of print-outs from the records of the Office for Harmonization of Internal Markets (“OHIM”) for those registrations are attached as Annex 7.

Second Complainant is also the record owner of the following registrations for the ENTERPRISE and ENTERPRISE RENT-A-CAR and related marks in the United States:

Registration No. 1,343,167 issued 18 June 18 1985
ENTERPRISE in International Classes 35, 37, 39 and 42, including “short-term rental and leasing of automobiles and trucks” and "automotive dealership services."

Registration No. 2,371,192 issued 25 July 2000
ENTERPRISE RENT-A-CAR in International Class 39
(“RENT-A-CAR” disclaimed apart from the mark as shown) for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

Registration No. 2,424,137 issued 23 January 2001
WWW.ENTERPRISE.COM in International Class 39 for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

Registration No. 2,458,529 issued 5 June 2001
ENTERPRISE.COM in International Class 39 for “vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles.”

Copies of print-outs from the records of the United States Patent and Trademark Office showing the current status of each of these registrations are attached collectively as Annex 8.

In addition to its registrations in the European Community and the United States, Second Complainant has registered the ENTERPRISE mark for vehicle rental services in many other countries.

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

Initially, it must be noted that in the vehicle rental business, the terms "Rent a Car" and "Car Rental" are interchangeable. For example, among many others, the following companies operate using "Rent A Car":

ENTERPRISE RENT-A-CAR
AVIS RENT A CAR
DOLLAR RENT A CAR
ALAMO RENT A CAR
BUDGET RENT A CAR
ECONOMY RENT A CAR
LOCALIZA RENT A CAR
AUTOREISEN RENT A CAR
ACE RENT CAR

And, among others, the following companies operate using "Car Rental":

HERTZ CAR RENTAL
NATIONAL CAR RENTAL
THRIFTY CAR RENTAL
SIXT CAR RENTAL
ADVANCE CAR RENTAL
POSADA CAR RENTAL
353 CAR RENTAL
PAYLESS CAR RENTAL

And regardless of whether it operates using “Rent a Car” or “Car Rental,” a vehicle rental company is considered to offer “car rentals” and “rental cars.” Along with “car hire” used primarily outside of North America, those are the generic terms used in connection with vehicle rental services.

The domain names nationalrentelcar.com and interpisecarrental.com are both confusingly similar to the registered NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT-A-CAR marks respectively. Each domain name, nationalrentelcar.com and interpisecarrental.com, is a common typo of a domain name that is confusingly similar to one of Complainants’ marks plus a generic term for the services offered by First Complainant’s licensee and Second Complainant under those marks. With regard to the domain name nationalrentelcar.com, “National Rental Car” is misspelled as “National Rentel Car.” With regard to interpisecarrental.com, “Enterprise Car Rental” is misspelled as “Interpise Car Rental.”

Under [ICANN] Policy 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 a generic term related to the Complainant’s business, in this case “Rental Car” misspelled as “Rentel Car” and “Car Rental” or where the domain name is merely a common “typo” or misspelling of Complainant’s mark, in this case “Enterprise” misspelled as “Interpise.” See Victoria’s Secret v. Zuccarini, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant’s marks); Marie Claire Album v. Blakely, D2002-1015 (WIPO Dec. 23, 2002) (holding that the letters "www" are not distinct in the "Internet world" and thus Respondent 's <wwwmarieclaire.com> domain name is confusingly similar to Complainant's MARIE CLAIRE trademark); and Bank of Am. Corp. v. InterMos, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding that Respondent’s domain name <wwwbankofamerica.com> is confusingly similar to Complainant’s registered trademark BANK OF AMERICA because it “takes advantage of a typing error (eliminating the period between the www and the domain name) that users commonly make when searching on the Internet”). See also Sony Kabushiki Kaisha v. Inja, Kil D2000-1409 (WIPO Dec. 9, 2000) (finding that “[n]either the addition of an ordinary descriptive word . . . nor the suffix ‘.com’ detract from the overall impression of the dominant part of the name in each case, namely the trademark SONY” and thus Policy ¶ 4(a)(i) is satisfied); and Space Imaging LLC v. Brownwell, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where Respondent’s domain name combines Complainant’s mark.

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 disputed domain names.

The disputed domain name nationalrentelcar.com resolves to a web page that prominently features links to web pages that offer rental car services. The “Related Searches” area of the nationalrentelcar.com web page consists of links to the home page of Budget Car Rental (one of First Complainant’s licensee’s competitors) and the home pages of various web sites that offer additional links to web sites that offer car rental services. For example, by clicking on the link to “Car Rental” on the nationalrentelcar.com web page the user is taken to another web page that offers rental car services from First Complainant’s licensee and its licensee’s competitors, such as Avis Car Rentals and Budget Car Rental. A copy of the web page at nationalrentelcar.com and the web page linked to “Car Rental” on the nationalrentelcar.com web page are attached as Annex 9.

The disputed domain name interpisecarrental.com resolves to a web page that is virtually the same as the web page at nationalrentelcar.com and which also prominently features links to web pages that offer car rental services. The “Related Searches” area of the interpisecarrental.com web page consists of links to the home page of Budget Car Rental (one of Second Complainant’s competitors) and the home pages of various web sites that offer additional links to websites that offer car rental services. For example, by clicking on the link to “Rent a Car” on the interpisecarrental.com web page the user is taken to another web page that offers car rental services from Second Complainant’s competitors, including Avis Rent A Car and Hertz Car Rentals, as well as First Complainant’s licensee’s web site at nationalcar.com. A copy of the web page at interpisecarrental.com and the web page linked to “Rent a Car” on the interpisecarrental.com web page are attached as Annex 10.

In light of the long-standing use and registration of the NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks in connection with vehicle rental services throughout the world, Respondent cannot have any legitimate rights in the domain names at issue when used in connection with web sites that offer vehicle rental services or links to other competitor providers of vehicle rental services. The fact that Respondent’s web pages for the domain names at issue both include links to the web sites of First Complainant’s licensee’s and various competitors in the vehicle rental services field is clear evidence that Respondent was well aware of the existence of Complainants and their respective rights in the NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks in connection with vehicle rental services.

Respondent’s use is neither a bona fide offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). See Golden Bear Int’l, Inc. v. Kangdeock-ho, FA 190644 (Nat. Arb Forum Oct. 17, 2003)(“Respondent’s use of a domain name confusingly similar to Complainant’s mark(s) to divert Internet users to websites unrelated to Complainant’s business does not represent a bona fide offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”); see also Disney Eners., Inc. v. Dot Stop, FA 145227 (Nat. Arb. Forum Mar. 17, 2003)(finding that the respondent’s diversionary use of the complainant’s mark(s) to attract Internet users to its own website, which contained a series of hyperlinks to unrelated websites, was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names).

Neither of the Complainants has licensed or otherwise permitted Respondent to use the NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE or ENTERPRISE RENT A CAR marks (or variations thereof) in connection with car rental or rental car services or any other goods or services or to apply for any domain name incorporating the NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE or ENTERPRISE RENT A CAR marks. In addition, Respondent is clearly not making any legitimate noncommercial or fair use of “National Rentel Car” or “Interpise Car Rental.” In fact, any claim in that regard is easily dismissed since the web pages used by Respondent are virtually identical generic web pages commonly used by domain name owners seeking to “monetize” their domain names through “click-through” fees. See Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020 (WIPO Mar. 14, 2000)(finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); see also Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO June 27, 2000)(finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant’s prior rights in the domain name precede the respondent’s registration; (3) the respondent is not commonly known by the domain name in question).

There is nothing to indicate that Respondent, either WhoisPrivacy Limnited or Wanzhongmedia c/o Wan Zhong is commonly known as “National Rentel Car” or “Interpise Car Rental." See Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); see also Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant’s prior rights in the domain name precede the respondent’s registration; (3) the respondent is not commonly known by the domain name in question).

As indicated above, First Complainant’s licensee operates an on-line vehicle rental web site at nationalcar.com and nationalrentalcar.com. Second Complainant operates an on-line vehicle web site at enterprise.com and

enterprisecarrental.com. It is clear that Respondent has no legitimate rights in the domain names at issue and is attempting to divert Internet traffic to the web pages to which the respective domain names resolve when Internet users mistakenly type “nationalrentelcar.com” or "interpisecarrental.com trying to reach the National Car Rental or Enterprise Rent A Car web sites. Such a use constitutes a lack of rights or legitimate interest in the disputed domain names under ICANN Policy ¶¶ 4(c)(i) and (ii). See Big Dog Holdings, Inc. v. Day, FA93554 (Nat. Arb. Forum Mar. 9, 2000)(finding no legitimate use when respondent was diverting consumers to its own web site by using complainant’s trademark(s)): see also MSNBC Cable, LLC v. Tysys.com, D2000-1204 (WIPO Dec. 8, 2000)(finding no rights or legitimate interest in the famous MSNBC mark where respondent attempted to profit using complainant’s mark by redirecting Internet traffic to its own website).

Because of the commercial nature of Respondents’ web sites, it seems beyond question that the use of the domain names at issue 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 facts of record suggest and support a finding that Respondent both registered and is using the domain names at issue in bad faith. Respondent registered two domain names that are typos of domain names used by the First Complainant’s licensee and Second Complainant and which are confusingly similar to trademarks owned by the Complainants. This evidences a clear intent to trade upon the goodwill associated with Complainants' NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks for vehicle rental services. Respondent is deliberately using domain names that are confusingly similar to Complainants' marks to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web sites and the services offered at such web sites. Respondent’s bad faith is clearly evident from the fact that the links on the web pages to which the domain names at issue resolve to web sites offering car rental services, thereby continuing the charade by trying to trick people into believing they reached the real NATIONAL CAR RENTAL or ENTERPRISE web sites or some other web sites affiliated with Complainants.

A review of Respondent’s web pages makes it very clear that Respondent has set up the web sites to which the domain names at issue resolve with a view to commercial gain from “click-through” payments from Internet users who make mistakes typing when trying to reach the NATIONAL CAR and ENTERPRISE vehicle rental web sites. Although some visitors may realize their mistake, there will inevitably be a number who do “click through”. The very essence of setting up the web sites to which the domain names at issue resolve must be that it does result in commercial gain from Internet users accessing the links through the web sites to which the domain names at issue resolve. Clearly Respondent does not operate businesses known as “National Rentel Car” or "Interpise Car Rental," nor, to the best of Complainants' knowledge, does it advertise under any of those names.

The business model based upon use of an infringing domain name to attract users to Respondent’s web site is clear evidence that Respondent registered and is using the domain names at issue in bad faith pursuant to Policy ¶ 4(b)(iv). See Kmart v. Kahn, FA 127708 (Nat. Arb. Forum Nov. 22, 2002)(finding that if a respondent profits from its diversionary use of a complainant’s mark when a domain name resolves to commercial websites and that respondent fails to contest a complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv)); see also State Farm Mut. Auto. Ins. Co. v. Northway FA 95464 (Nat. Arb. Forum Oct. 11, 2000)(finding that a respondent registered the domain name <statefarmnews.com> in bad faith because that respondent intended to use a complainant’s marks to attract the public to the web site without permission from that complainant).

As a result, Respondent’s registration and use of the domain names at issue falls squarely within the parameters of ICANN Policy ¶ 4(b)(iv). See G.D. Searle & Co. v. Celebrex Drugstore, FA 123933 (Nat. Arb. Forum Nov. 21, 2002)(finding that respondent registered and used the domain name in bad faith pursuant to ICANN Policy ¶ 4(b)(iv) because respondent was using the confusingly similar domain to attract Internet users to its commercial website). See also Mattel, Inc., v. .COM. Co., FA 12683 (Nat. Arb. Forum Dec. 2, 2002) citing Pavillion Agency, Inc. v. Greenhouse Agency Ltd., D2000-1221 (WIPO Dec. 4, 2000)(finding that the “domain names are so obviously connected with the complainant that the use or registration by anyone other than complainant suggests ‘opportunistic bad faith’”).

In summary, it cannot be disputed that the Complainants have long standing and well-recognized rights and goodwill in their NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks in connection with vehicle rental services. The nationalrentelcar.com and interpisecarrental.com domain names are confusingly similar to Complainants' NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks. Respondent has no legitimate rights in the domain names at issue. Respondent has merely registered the nationalrentelcar.com and interpisecarrental.com domain names to capitalize on the goodwill that Complainants have developed in their NATIONAL, NATIONAL CAR RENTAL, ENTERPRISE and ENTERPRISE RENT A CAR marks to drive Internet traffic inappropriately to other websites for commercial gain.

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

REGARDING THE PROCEDURE

This case presents specificity in the sense that the name of the Respondent has been changed after the Complaint was initiated by Complainant: while the Respondent was “Whois Privacy Limited” at the time of the Complaint, it has been changed to “WhanZhongMedia” after the Complaint was notified to the (first) Respondent. The registrar declared that this was possible because the Respondent was apparently using a proxy registration provider.

A proxy service provider registers the domain name on the registrant’s behalf and then licenses the use of the domain name to the registrant. The contact information in a WHOIS directory for a domain name registered with a proxy service is that of the proxy service provider (see ICANN’s Study on the Prevalence of Domain Names Registered using a Privacy or Proxy Service among the top 5 gTLDs, Augustus 13, 2010).

The use of a proxy service provider is not forbidden.

However, neither the UDRP nor the UDRP-Rules deal with the rather recent phenomenon of privacy proxy services and, consequently, give no guidance on how to deal with the issues caused by such services (see ADR case nr 100093). Moreover, the ICANN Registrar Accreditation Agreement does not contain any provision regulating Whois information provided by privacy/proxy service providers.

The UDRP procedure has demonstrated to be efficient and cost-effective, notably because the system is based on simple procedural principles including the fact that from a procedural point of view: (i) once the Complaint is filed, the domain name is frozen until there is a decision and (ii) the Complaint is filed against (and notified to) the person appearing to be the domain name holder in the Whois Database.

The Panel considers that in the absence of any written guidance in the UDRP, it 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.

This is not a decision against privacy/proxy provider; it is a mere procedural issue: changing the name of the Respondent after the notification of the Complaint should have no detrimental consequence on the procedural principles of the system. Based on the facts of each case, such 'transfer' could well have far-reaching implications on the merits, but from a procedural point of view this is a mere administrative decision of the holder.

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.

REGARDING THE REQUEST FOR A TRANSFER

The Panel finds that the disputed domain name “nationalrentelcar.com” is confusingly similar to the First Complainant’s trademark (“National Rental Car”).

The Panel finds that the disputed domain name “interpisecarrental.com” is confusingly similar to the Second Complainant’s trademark (“Enterprise Car Rental”).

Each domain name, nationalrentelcar.com and interpisecarrental.com, is a common typo or misspelling of a domain name that is confusingly similar to one of Complainants’ marks plus a generic term for the services offered by First Complainant’s licensee and Second Complainant under those marks. With regard to the domain name nationalrentelcar.com, “National Rental Car” is misspelled as “National Rentel Car.” With regard to interpisecarrental.com, “Enterprise Car Rental” is misspelled as “Interpise Car Rental.”

In the absence of Answer to the Complaint, the Panel takes the view that the Respondent does not have any right or legitimate interests in respect of the domain name.

It is not licensed or authorized by Complainants to use the trademarks. It is not commonly known under these names. Respondent provides no explanation as to reasons for choosing such domain names.

Both domain names are used to host a website offering links in relation with car rental towards Complainants’ competitor’s websites (pay per click use). There is no sign of a bona fide offering of good or service.

The Complainants also proved that the Respondent has engaged in a pattern of conduct regarding bad faith domain name registration and use of domain names.

These facts include: (i) the absence of a Response, (ii) the use of common typo or misspelling in order to divert traffic, (iii) the clear business model based upon use of an infringing domain name to attract users on a domain name with the expectation that users shall click on the links linking them to other commercial sites including Complainants’ competitor’s websites, (iv) the registration and use in order to prevent the Complainants from reflecting their trademarks in a corresponding domain name under .com.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NATIONALRENTELCAR.COM**: Transferred
2. **INTERPISECARRENTAL.COM**: Transferred

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2011-03-29

Publish the Decision