Decision for dispute CAC-UDRP-100233

Case number	CAC-UDRP-100233
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Domain names	enterpriserentalcarlocations.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Name	an jiang

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, Enterprise Holdings, Inc owns the following trade mark registrations for ENTERPRISE and ENTERPRISE RENT-A-CAR:

CTM registration no. 36384 dated 1 December 1998 for ENTERPRISE in classes 12, 36 and 39, including ‘vehicle rental services’.

CTM registration no. 5647995 dated 17 April 2008 for ENTERPRISE RENT-A-CAR figurative mark in Classes 12, 35, 37 and 39, including ‘vehicle rental and leasing services’.

The Complainant also owns United States trademark registrations:

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 '.

FACTUAL BACKGROUND

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

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

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

Since long prior to Respondent's registration of the enterpriserentalcarlocations.com domain name on 4 November 2010, Complainant has been engaged in the rental car business under the ENTERPRISE and ENTERPRISE RENT-A-CAR marks. Complainant began renting cars in 1963. Complainant has used the ENTERPRISE and ENTERPRISE RENT-A-CAR marks in the United States since 1969. 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 in its fleet. With over 7000 offices worldwide, Enterprise is a recognized leader in the vehicle rental business. Enterprise expanded its business to Europe in 1994 and has operations in the United Kingdom, Germany and Ireland. Complainant operates an on-line car rental site at enterprise.com. A copy of Complainant's web page is attached as Annex 1. Complainant also owns the domain name enterpriserentalcar.com.

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

Complainant, Enterprise Holdings, Inc., has registered its ENTERPRISE and ENTERPRISE RENT-A-CAR marks and owns the following European Community trademark 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. 5647995 dated 17 April 2008 for ENTERPRISE RENT-A-CAR and Design (Stylized) in Classes 12, 35, 37 and 39, including "vehicle rental and leasing services."

Copies of print-outs from the records of the Office for Harmonization of Internal Markets ("OHIM") for those registrations are attached as Annex 2.

Complainant, Enterprise Holdings, Inc., has registered its ENTERPRISE and ENTERPRISE RENT-A-CAR marks and owns the following United States trademark registrations:

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 3.

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

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

The domain name enterpriserentalcarlocations.com is confusingly similar to Complainant's registered ENTERPRISE and ENTERPRISE RENT-A-CAR marks. The domain name at issue, enterpriserentalcarlocations.com, fully incorporates Complainant's ENTERPRISE mark with the addition of "rental car," a term that describes Respondent's business, the descriptive term "locations" and the top-level domain ".com." A general rule under [ICANN] Policy 4¶(a)(1) is that the addition of a descriptive term to Complainant's mark does not adequately distinguish Respondent's domain name from the mark. See Arthur Guiness Son & Co. (Dublin) Ltd. v. Healy/BOSTH, D2011-0026 (WIPO March 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term). See also Sony Kabushiki Kaisha v. 0-0 Adult Video Corp., FA 475214 (Nat. Arb. Forum June 27, 2005). Furthermore, the addition of either a hyphen or the top-level domain is irrelevant to the analysis of whether the disputed name is confusingly similar to Complainant's mark. See Western Holdings, LLC v. RegisterFly.com, FA 651448 (Nat. Arb. Forum April 11, 2006 (finding confusing similarity between the mark HYLEXIN and the domain name hylexin-reviews.com).

[b.] Right to or Legitimate Interests. ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii).

Respondent has no rights or legitimate interests in the disputed domain name. As indicated above, Complainant operates an on-line rental car web site at enterprise.com, a copy of which is attached as Annex 1. The disputed domain name resolves to a dated web page with top links to "Publications, " "Comments," "Home," "About," and "Contact Us" and a search box, and which carries the following heading:

"enterprise rental car locations"

Beneath that heading are what appear short articles or news releases unrelated to Enterprise or its car rental locations. For example, the 12 March 2011 version of the web page at enterpriserentalcarlocations.com carried the title "Audi's global sales volume is nearly 92,000 in February followed by an almost incoherent text, such as;

"In February, Volkswagen is nearly 91,500 of global sales volume of manufacturer's Audi of luxurious car under command, goes up by 1/5 compared with the same period of last year, mainly benefit from the thing Audi's U.S.A.'s sales volume rises by a wide margin."

A copy of the web page to which the enterpriserentalcarlocations.com domain name resolved on 12 March 2011 is attached as Annex 4.

It is clear that Respondent is attempting to divert Internet traffic to its web site at enterpriserentalcarlocation.com by using a

domain name that is confusingly similar to Complainant's ENTERPRISE and ENTERPRISE RENT-A-CAR marks. Such use constitutes a lack of rights or legitimate interests in the disputed domain names under ICANN Policy ¶¶ 4(c)(i) and (iii). 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 trademarks); see also MSNBC Cable, LLC v. Tysys.com, D2000-1204 (WIPO Dec. 8, 2000) (finding no rights or legitimate interests in the famous MSNBC mark where Respondent attempted to profit using Complainant's mark by redirecting Internet traffic to its own website).

In light of the long-standing use and registrations of the ENTERPRISE and ENTERPRISE RENT-A-CAR marks in connection with car rental services in the United States and Europe, Respondent cannot have any legitimate rights in the enterpriserentalcarlocations.com domain name and 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 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 Enters., Inc. v. Dot Stop, FA 145227 (Nat. Arb. Forum Mar. 17, 2003) (finding that the respondent's diversionary use of the complainant's mark 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).

Complainant has not licensed or otherwise permitted Respondent to use its ENTERPRISE mark in connection with any goods or services or to apply for any domain name incorporating the ENTERPRISE mark. Because of commercial purpose of Respondent's web site to influence search engine rankings, Respondent's use is not a noncommercial or fair use under the Policy and, as a result, Respondent is clearly not making any legitimate noncommercial or fair use of "Enterprise Rental Car Locations." From Respondent's web site, which is clearly directed to English speaking consumers, it is readily apparent that he is merely attempting to divert web users from Complainant's web site.

There is nothing to indicate that Respondent is commonly known as "Enterprise Rental Car Locations." The domain name is owned by "an jiang" and there is no reference to "Enterprise Rental Car Locations" in the WHOIS record except as an email address. 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).

[c.] 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 name at issue in bad faith. Respondent's registration of a domain name that combines Complainant's "Enterprise" mark with the descriptor "Rental Car Locations" for a web site that attempts to attract Internet users to Respondent's web site evidences a clear intent to trade upon the goodwill associated with Complainant's ENTERPRISE and ENTERPRISE RENT-A-CAR for rental car services. 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 site.

Respondent is using enterpriserentalcarlocations.com as a version of a "content farm." It is contains large amounts of textual content which is specifically designed to satisfy algorithms for maximum retrieval by automated search engines. Respondent apparently is trying to influence search engine rankings by using low quality content that ranks high because it is well keyword-targeted so it will be ranked by search engines. Most likely, Respondent will then use it to create a link on other websites owned or controlled by Respondent to, in turn, boost search engine rankings for those other websites owned by or controlled by Respondent. In any event, Respondent is using a domain name that is confusingly similar to Complainant's ENTERPRISE and ENTERPRISE RENT-A-CAR marks for commercial gain. The very essence of setting up the

enterpriserentalcarlocations.com website must be that it does result in commercial gain from Internet users accessing the enterpriserentalcarlocations.com web site.

Clearly, Respondent does not operate a business known as “Enterprise Rental Car Locations” nor, to the best of Complainant’s knowledge, does it advertise under the Enterprise Rental Car Locations name.

Respondent’s business model is based upon use of infringing domain name to attract users to Respondent’s web site and is clear evidence that Respondent registered and is using the enterpriserentalcarlocations.com domain name in bad faith pursuant to Policy ¶ 4(b)(iv). See Kmart v. Khan, 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 that 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 name 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 name to attract Internet users to its commercial website). See also Mattel, Inc. v. .COM. Co., FA 12683 (Nat. Arb. Forum December 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 Complainants that the use or registration by anyone other than Complainants suggests ‘opportunistic bad faith’”).

In summary, it cannot be disputed that that Complainant has long standing and well-recognized rights and goodwill in its ENTERPRISE mark in connection with car rental services. Respondent has no legitimate trademark or service mark rights in the enterpriserentalcarlocations.com domain name. Respondent has merely registered the enterpriserentalcarlocations.com domain to capitalize on the goodwill that Complainant has developed in its ENTERPRISE and ENTERPRISE RENT-A-CAR marks to drive Internet traffic inappropriately to another website 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

Under Paragraph 15 of the Rules, the Panel must decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. The Respondent has not complied with Paragraph 5 of the Rules and filed a Response. In accordance with Paragraph 14 of the Rules, in the absence of any exceptional circumstances the Panel will proceed to a decision on the Complaint and may draw such inference from the Respondent's default as it considers appropriate.

The Panel is satisfied that the Respondent has received notice of the proceedings as evidenced by the Providers' record that the Respondent logged onto the online platform on 18 March 2011. In not filing a Response to the Complaint, the Respondent has chosen not to contest any of the Complainant's submissions or any of the evidence submitted in the annexes attached to the Complaint.

The Complainant must prove each of the following three elements set out in Paragraph 4(a) of the Policy:

(i) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar

The domain name entreprisecarrentallocations.com was registered after the Complainant registered its ENTERPRISE and ENTERPRISE-CAR-RENTAL trade marks.

The domain name incorporates the Complainant's ENTERPRISE mark and adds to it the descriptive words 'rental car location' plus the suffix '.com'.

The generic top level domain suffix .com can be ignored for the purpose of determining whether the domain name is confusingly similar to the Complainant's mark. Where the domain name consists of the complainant's mark and the addition of descriptive or generic words it may be confusingly similar to the Complainant's trade mark (see TPI Holdings, Inc. v. Carmen Armengol (WIPO Case No. D2009-0361).

The incorporation of the Complainant's mark ENTERPRISE in the domain name and the similarity between the disputed domain name and the Complainants marks ENTERPRISE and ENTERPRISE-CAR-RENTAL is likely to create confusion between those marks and the disputed domain name. Adding to the Complainant's mark ENTERPRISE the descriptive words 'rental car locations', which replicates words, although in a different order, used on the Complainant's website, increases rather than negates the confusing similarity between of the domain name and Complainant's mark.

The Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or legitimate interests

Under the Rules, the second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii)). The Respondent in not filing a Response has not asserted any of the grounds set out in Paragraph 4(c)) of the Policy by which a Respondent may demonstrate rights or legitimate interests in the domain name.

The Complaint has long standing rights in the ENTERPRISE and ENTERPRISE-CAR-RENTAL trade marks which predate the registration of the domain name. The Complainant operates an on-line car rental business at www.enterprise.com and uses the words 'Car rental locations' on its website.

The disputed domain name resolves to a website which has the heading ‘enterprise rental car locations’. There appears to be no legitimate use of the domain name. The Respondent is not licensed or permitted to the Complainant’s marks. There is nothing to indicate that the Respondent is commonly known as ‘Enterprise Rental Car Locations’ or has any legitimate use for the website. It appears that the Respondent in using of the Complainant’s mark in connection with its website is attempting to divert users from the Complainant’s website.

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

C. Registered and Used in Bad Faith

The third element that the Complainant must prove is that the disputed domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).
The Complainant’s trade marks ENTERPRISE and ENTERPRISE-CAR-RENTAL predate the registration of the domain name.
The Respondent has registered the domain name which incorporates the Complainant’s trade mark ENTERPRISE and combines it with the descriptor ‘rental car locations’. There appears to be no other explanation for the registration of the domain name than to trade off the goodwill associated with the Complainant’s ENTERPRISE and ENTERPRISE-CAR-RENTAL trade marks.
The Respondent’s use of the domain name in connection with a website does not appear to be in connection with a legitimate business. By not filing a Response, the Respondent has chosen not to contest the Complainant’s submission that the Respondent is using the domain name to attract internet users to its website by deliberately using a domain name that is confusingly similar to the Complainant’s marks.
On the basis of the uncontested evidence submitted by the Complainant, it appears that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the web site. The Panel is satisfied that the Complainant has succeeded in proving that the Respondent registered and used the 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. **ENTERPRISERENTALCARLOCATIONS.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Marion Bailey**

DATE OF PANEL DECISION 2011-04-27

Publish the Decision