Decision for dispute CAC-UDRP-100774

Case number	CAC-UDRP-100774
Time of filing	2014-03-19 20:44:03
Domain names	enterprisecareshare.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Domain Admin c/o Privacy Protection Service INC dba PrivacyProtect.org

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of US Reg. No. 4,273,517 issued on January 8, 2013

FACTUAL BACKGROUND

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

Complainant's main contentions are the following:

The Complainant, Enterprise Holdings, Inc. is the record owner of at least one valid trademark registration for the ENTERPRISE CARSHARE mark in the United States. The Complainant licenses the ENTERPRISE CARSHARE mark to Enterprise Rent-A-Car operating companies. Started in 1974, Enterprise is an internationally recognized brand serving the daily rental needs of customers throughout the United States, Canada, Ireland, Germany and the United Kingdom. In 2012, the Complainant's licensee, Enterprise-A-Car, began offering car share services using the ENTERPRISE CARSHARE mark. The Complainant's licensee operates an online car share web site at enterprisecarshare.com.

The disputed domain name enterprisecareshare.com is confusingly similar to Complainant's registered ENTERPRISE

CARSHARE mark. The enterprisecareshare.com domain name fully incorporates the Complainant's ENTERPRISE CARSHARE mark, merely adding an "e" between CAR and SHARE, deleting the space between ENTERPRISE and CARSHARE and adding the generic top level domain identifier, ".com."

The Respondent has no rights or legitimate interests in the enterprisecareshare.com domain name. The Complainant's licensee began using the ENTERPRISE CARSHARE mark in October, 2012 and the Complainant's U.S. registration for ENTERPRISE CARSHARE was issued on January 8, 2013. The Respondent registered the enterprisecareshare.com domain name on June 4, 2013.

On February 25, 2014 the enterprisecareshare.com domain name resolved to a web page with a list of "Related Links" and "Sponsored Listings" consisting of links to other web sites, some of which offered car rental services, including those of the Complainant and its competitors.

In the light of the use and registration of the ENTERPRISE CARSHARE mark by the Complainant, the Respondent cannot have any legitimate rights in the enterprisecareshare.com domain name in connection with a site that serves merely to drive Internet traffic to web sites offering car rental services, including competitors of the Complainant.

The Respondent's use is neither a bona fide offering of goods or services pursuant to the paragraph 4(c)(i) of the Policy nor a legitimate non-commercial or fair use pursuant to paragraph 4(c)(iii) of the Policy.

According to the information on record, the Complainant concludes that Respondent has not been commonly known by the contested domain name so as to have acquired rights to or legitimate interests in it within the meaning of paragraph 4(c)(ii) of the Policy.

These facts suggest that the Respondent is not known as or operating as "Enterprise Care Share," but instead is attempting to use the goodwill generated by the ENTERPRISE CARSHARE mark to drive Internet traffic to its web site through use of a confusingly similar domain name.

The Complainant has not licensed or otherwise permitted the Respondent to use its ENTERPRISE CARSHARE mark in connection with car rental services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE CARSHARE mark. In addition, the Respondent is clearly not making any legitimate noncommercial or fair use of enterprisecareshare.com. In fact, any claim in that regard is easily dismissed since the enterprisecareshare.com web page is a generic type of web page commonly used by domain name owners seeking to monetize their domain names through "click-through" fees.

Finally, according to the Complainant, the facts of record suggest and support a finding that the Respondent both registered and is using the enterprisecareshare.com domain name in bad faith. The Complainant contends that the enterprisecareshare.com domain name is a typo of Complainant's ENTERPRISE CARSHARE mark. As such, the Respondent's registration of a domain name consisting of a typo of Complainant's mark is typo squatting. This use of the enterprisecareshare.com domain name for a web site that attempts to attract Internet users to the Respondent's web page, evidences a clear intent to trade upon the goodwill associated with the Complainant's ENTERPRISE CARSHARE mark for car rental services. Respondent is deliberately using a domain name that is confusingly similar to the Complainant's mark to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites and the services offered at such web sites.

The web page to which the enterprisecareshare.com domain name resolves is a "pay-per-click" web page. It contains online advertising that will provide someone, presumably the Respondent, with revenue from "click-through" fees from Internet users who find their way to the web page at enterprisecareshare.com. At least some Internet visitors to the Respondent's web page at enterprisecareshare.com will either not realize that they have been unwittingly directed to a web site that has no affiliation to Enterprise CarShare or not care that they are not at the "official" Enterprise CarShare web site and will "click through" the links provided by the Respondent.

The business model based upon use of an infringing domain name to attract users to the Respondent's web site is clear evidence that the Respondent registered and is using the enterprisecareshare.com domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Respondent's bad faith is also clearly evident from the fact that the web page for enterprisecareshare.com includes links to the real Enterprise Rent-A-Car web page and for which Enterprise must pay a click-through fee if those links are used. The "Sponsored Listings" link to the Complainant's web page even contains the ® symbol, indicating a protected trademark.

From the above it is clear that the Respondent's registration and use of the enterprisecareshare.com domain name falls squarely within the parameters of paragraph 4(b)(iv) of the Policy.

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.

At the time of the commencement of this proceeding, the owner of the record of the disputed domain name was PrivacyProtect.org C/O ID#10760. As the Complainant correctly predicted, once notified of the Complaint, the Registrar disclosed another owner for the disputed domain name, Mr. Sergey Asmik of St. Petersburg. The Complainant preferred not to change the Respondent's name in the Complaint based on the arguments of CAC decision No. 100221.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name <enterprisecareshare.com> is confusingly similar to the Complainant's earlier trade mark "ENTERPRISE CARSHARE". Sufficient evidence has been submitted by the Complainant proving that it owns trademark rights to ENTERPRISE CARSHARE at least in the USA.

2. 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). For the purpose of the Complaint, the Respondent shall be considered, in addition to the domain name privacy service shown in the WHOIS, the real owner of the domain name (Sergey Asmik, St. Petersburg, Adygeja - Respublika, Russia, as per the corresponding registrar verification).

The Respondent has not submitted evidence of any use of the disputed domain name in connection with a bona fide offering of goods or services. UDRP panels have previously held that the Respondent's use of a domain name, which incorporates a third party's trademark in connection with an Internet web site that merely lists links to third party web sites is not a bona fide offering of services. The Respondent is not commonly known by the domain name and he is not making legitimate non-commercial or fair use of them. There appears to be no other basis on which the Respondent could claim any rights or

legitimate interests to the domain name.

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The Respondent is currently using the domain name as a pay-per-click web page. The Complainant proved to the satisfaction of the Panel that the Respondent registered and used a domain name that is confusingly similar to the Complainant's mark to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its website and the services offered at such websites as stipulated in paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ENTERPRISECARESHARE.COM**: Transferred

PANELLISTS

Name	**Jose Checa**

DATE OF PANEL DECISION 2014-05-02

Publish the Decision