Decision for dispute CAC-UDRP-100966

Case number	**CAC-UDRP-100966**
Time of filing	**2015-04-14 14:13:25**
Domain names	**trianglecarhire.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Enterprise Holdings, Inc.**

Complainant representative

Organization	**Harness, Dickey & Pierce, PLC**

Respondent

Organization	**Domains By Proxy, LLC**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name TRIANGLECARHIRE.COM (the 'Domain Name').

IDENTIFICATION OF RIGHTS

Enterprise Holdings, Inc (the 'Complainant') is the owner of a current registered trade mark TRIANGLE in the United States of America under number 2,191,897 ('the TRIANGLE mark'), originally registered on 29 September 1998 and renewed on 21 January 2008. The Complainant's TRIANGLE trade mark is registered for 'automobile dealership services featuring used rental cars' in class 35 and also for 'renting and leasing automobiles...' in class 39.

FACTUAL BACKGROUND

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

The Complainant is the owner of the TRIANGLE mark. The TRIANGLE mark has been used in connection with rental car services since 1981.

The Domain Name was registered by “Domains By Proxy, LLC” (the 'Respondent') on 18 August 2014, and has been used to resolve to a web page featuring a list of "Related Links" which contains links to third party web sites offering rental car services.

The Respondent is a domain privacy service, although following the Request for Registrar Verification issued by the Czech Arbitration Court ('the CAC'), the proxy shield was lifted and the registrant was revealed to be Rui Zhang, Invertising Ltd of Nanjing, China.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANTS' CONTENTIONS:

The Complainant claims that it does not need to amend its complaint if the Registrar reveals the real owner of the Domain Name at issue.

The Complainant asserts that the Domain Name is confusingly similar to its trade mark TRIANGLE as the Domain Name incorporates the Complainant's trade mark TRIANGLE combined with the term "carhire", which is descriptive of the Complainant's business. This combination constitutes a domain name which is confusingly similar to the Complainant's trade mark TRIANGLE. The Complainant also asserts that the generic top level domain identifier ".com" is also insufficient to distinguish the Domain Name from the Complainant's trade mark TRIANGLE.

The Complainant furthermore claims that the Respondent has no rights or legitimate interests in respect of the Domain Name. In light of the long-standing use and registration of the Complainant's trade mark TRIANGLE, the Complainant asserts that the Respondent cannot have any legitimate rights in the Domain Name in connection with a site that serves merely to drive Internet traffic to web sites offering car rental services. Such use is not a bona fide offering of goods or services, nor is it legitimate noncommercial or fair use.

According to the Complainant, the website to which the Domain Name resolves gives no indication that the Respondent is known as, operating a business as, or advertising as "Triangle Car Hire". The Complainant therefore concludes that the Respondent has not been commonly known by the Domain Name so as to have acquired rights to or legitimate interests in it.

The Complainant claims that by deliberately including the Complainant's TRIANGLE trade mark in the registration of the Domain Name, the Respondent is attempting to use the goodwill of the TRIANGLE trade mark to drive Internet traffic to its website through use of a confusingly similar domain name. The Complainant submits that it has not licensed or otherwise permitted the Respondent to use its TRIANGLE mark in connection with rental car services.

Finally, the Complainant asserts that the Domain Name was registered and is being used in bad faith. In this regard, the Complainant claims that the Respondent is deliberately using a domain name that is confusingly similar to the Complainant's TRIANGLE mark to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainant's TRIANGLE mark as to the source, sponsorship, affiliation or endorsement of its websites and the services offered at such websites.

The Complainant claims that the Respondent's website contains 'pay per click' advertising which will provide the Respondent with revenue from click-through fees. The Complainant also claims that, from the content of the Respondent's web page at the Domain Name, the Respondent had actual knowledge of the rights of the Complainants' predecessor's interest in the TRIANGLE trade mark for rental car services when the Respondent first registered the Domain Name.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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

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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.

The Complainant, being represented by Harness, Dickey & Pierce, PLC, filed its complaint in relation to the Domain Name with the CAC on 14 April 2015.

Following the request for Registrar Verification, and the resultant lifting of the proxy shield revealing the true registrant of the Domain Name, the CAC informed the Complainant that it was not necessary for them to amend the Complaint so as to include the name that was revealed, and based this on decision No. 100221. This appears to the Panel to be entirely reasonable.

The CAC then formally commenced proceedings on 17 April 2015 and notified the Respondent accordingly.

The Respondent failed to submit a Response within the time frame required in this Complaint, or at all, and a Notification of Respondent’s Default was therefore issued by the CAC on 11 May 2015.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Legal - Solicitors, as the Panel in these UDRP proceedings on 14 May 2015.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR - paragraph 4(a)(i) of the Policy

The disputed Domain Name 'trianglecarhire.com' consists of the Complainant's TRIANGLE mark registered in the United States of America, combined with the descriptive term 'carhire' and the '.com' suffix.

The '.com' suffix may be disregarded when it comes to considering whether a domain name is confusingly similar to a trade mark in which the Complainant has rights.

Further, the mere addition of the term 'carhire', which describes the nature of the Complainant's business, does not serve to distinguish the Domain Name from the Complainant's TRIANGLE trade mark, particularly in light of the fact the that Complainant's trade mark registration covers automobile dealership services featuring rental cars in class 35 and renting and leasing of automobiles in class 39. See Warner Bros. Entertainment Inc.; New Line Productions, Inc. and DC Comics v. Procount Business Services FA 360942 (Nat. Arb. Forum Dec 22, 2004), finding that the addition of generic terms as well as the omission of spaces fails to create a meaningful distinction between the disputed domain name and the mark within it because "such additions do not disguise the fact that the dominant features of the domain names are Complainant’s marks, and each domain name is therefore confusingly similar to the marks pursuant to Policy ¶ 4(a)(i)".

As a result, the Panel concludes that the disputed Domain Name is confusingly similar to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS - paragraph 4(a)(ii) of the Policy

The Respondent failed to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

The Respondent does not appear to have any trade marks associated with the TRIANGLE trade mark. There is no evidence that the Respondent is commonly known by this mark, and the Respondent does not have any consent from the Complainant to use the TRIANGLE mark.

There is no evidence to show the Respondent may have used the disputed Domain Name for any bona fide offering of goods or services of its own. The third party links on the Respondent's website appear to the panel to compete in some way or another with the Complainant's car hire services. This is not therefore a bona fide offering of goods and services under 4(c)(i) of the Policy and it is not a legitimate non-commercial or fair use under 4(c)(iii) of the Policy. See AM Int'l Group Inc. v Benjamin, FA 9442542 (Nat. Arb Forum May 11, 2007) finding that the respondent's use of a confusingly similar domain name to advertise real estate services which competed with the complainant's business did not constitute a bona fide offering of goods and services under paragraph 4(c)(iii) of the Policy.

Accordingly, the Panel finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii)of the Policy.

REGISTERED AND USED IN BAD FAITH - paragraph 4(a)(iii) of the Policy

Paragraph 4(b) of the Policy sets out non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith including circumstances where, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product of service on its website or location.

The Panel believes from the facts that the Respondent had the Complainant's TRIANGLE mark in mind when registering the Domain Name. The evidence of the Respondent's website shows that the site contained commercial links to other car hire related websites. See Pfizer Inc. v Suger 02002-0187 (WIPO Apr 24, 2002) finding the link between the complainant's mark and the content advertised on the respondent's website was obvious, and therefore the respondent must have known about the complainant's mark when it registered the disputed Domain Name.

The Panel therefore finds that the Respondent has attempted to attract and cause confusion amongst Internet users between the Complainant's TRIANGLE mark, and that the competing third party links on the website attached to the Domain Name is likely to be for commercial gain in that it is likely to be earning click-through income for the Respondent. See AOL LLC v AIM Profiles, FA 964479 (Nat Arb Forum May 20, 2007) finding registration and use of the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy because the Respondent was commercially gaining from the likelihood of confusion between the complainant's mark and the competing instant messaging products and services advertised on the Respondent's website attached to the disputed domain name.

As such, the Panel finds that the Domain Name is likely to have been registered intentionally to attempt to attract, for commercial gain, Internet users to the web site hosted at the Domain Name, by creating a likelihood of confusion with the Complainant's TRIANGLE trade mark (paragraph 4(b)(iv) of the Policy), and therefore the Domain Name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TRIANGLECARHIRE.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2015-05-29

Publish the Decision