Decision for dispute CAC-UDRP-100967

Case number	CAC-UDRP-100967
Time of filing	2015-04-14 14:15:30
Domain names	trianglerental.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Whois protection, this company does not own this domain name s.r.o.

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence that it owns US trademark registration No. 2191897 TRIANGLE, registered on September 29, 1998.

FACTUAL BACKGROUND

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

The Complainant contends that it is the owner of the TRIANGLE mark, which was formerly owned by Triangle Rent A Car, LLC. The TRIANGLE mark has been used in connection with rental car services since 1981. It further contends that the domain name trianglerental.com is confusingly similar to Complainant's registered TRIANGLE mark since it fully incorporates Complainant's TRIANGLE mark, merely adding the term "rental" which is descriptive of Complainant's business and adding the generic top level domain identifier ".com."

According to the Complainant, the Respondent has no rights or legitimate interests in the trianglerental.com domain name. The web site at the trianglerental.com domain name resolved to a web page with a list of "Related Links" which contained links to web sites offering rental car services, including those of the Complainant and its competitors. The Complainant

claims that the Respondent cannot have any legitimate rights in the trianglerental.com domain name in connection with a site that serves merely to drive Internet traffic to web sites offering rental car services from Complainant's licensee and its competitors. Further, Respondent's use is neither a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii) of the Policy. Further, the Complainant contends that the Respondent is not known as "Triangle Rental," but instead is attempting to use the goodwill of the TRIANGLE mark to drive Internet traffic to its web site through use of a confusingly similar domain name. The Respondent is clearly not making any legitimate noncommercial or fair use of trianglerental.com since the trianglerental.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.

According to the Complainant, the Respondent is deliberately using a domain name that is confusingly similar to Complainant's mark 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 sites and the services offered at such web sites.

From the above the Complainant concludes that Respondent's registration and use of the trianglerental.com domain name falls squarely within the parameters of ICANN paragraph 4(b)(iv) of the Policy.

The Complainant supports all the above assertions with abundant precedents and evidence.

The disputed domain name was registered January 18, 2013.

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 "Whois protection, this company does not own this domain name s.r.o.". Once notified of the Complaint, Registrar disclosed another owner for the disputed domain name Pavol Icik. Complainant preferred not to change the Respondent's name in the Complaint based on the arguments of CAC decision No. 100221. Accordingly, the Panel finds the CAC followed the correct procedure in accordance with the Policy and the Rules and accepts the request of Complainant that the Complaint proceeds against "Whois protection, this company does not own this domain name s.r.o.".

Regarding the language of proceedings, the Complainant has requested that they be held in English despite the language of the Registration Agreement being Slovak.

This Panel considers that it would be unreasonable to request the Complainant to translate the complaint. In the current proceedings Pavok Icik was sent notifications both in the Slovak and English language, so if he had any objection to the language, he had an opportunity to voice it. There are numerous UDRP proceedings in which the real owner of the disputed domain name Pavol Icik has been involved (always as a Respondent, and in all the decisions this Panellist is aware of, rulings have been consistently against Pavol Icik), where a similar pattern has been established ie. notifications being sent to Pavol Icik in both languages. There is no record of Pavil Icik ever disputing the language of proceedings. Last, this decision to maintain English as the language of proceedings is consistent with previous UDRP decisions as put forward by the Complainant.

The Panellist therefore accepts Complainant's request to conduct these proceedings in English.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name <trianglerental.com> is confusingly similar to the Complainant’s earlier trade mark "TRIANGLE". Sufficient evidence has been submitted by the Complainant proving that it owns trademark rights to TRIANGLE 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 (Pavol Icik, 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. **TRIANGLERENTAL.COM**: Transferred

PANELLISTS

Name	**Jose Checa**

DATE OF PANEL DECISION 2015-06-04

Publish the Decision