Panel Decision for dispute CAC-ADREU-006542

Case number	CAC-ADREU-006542
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Domain names	enterprize.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Respondent

Name	Domains Master

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings pending with regard to the domain name in dispute.

FACTUAL BACKGROUND

1. According to the Complainant's allegations, which have not been opposed by the Respondent:

- Enterprise Holdings, Inc. ("Complainant ") is a company registered in the United States of America, in other words, a company incorporated under the U. S. law;

- Enterprise Holdings, Inc. ("Complainant ") is the owner of the ENTERPRISE trademark for vehicle rental services including rental car services, which it licenses to the Enterprise Rent-A-Car operating companies.

- The Complainant, Enterprise Holdings, Inc., has for its part, several affiliated companies in various European countries;

- Complainant's affiliated companies have been offering vehicle rental services under the ENTERPRISE trademark in the United Kingdom since 1994, in Germany since 1997 and in Ireland since 1998;

2. Documentary evidence was provided demonstrating that the Complainant has, for several years, been the proprietor of multiple registrations of the trademark "ENTERPRISE" in a number of countries, namely:

a) European Community Trademark Registration No. 36384 for ENTERPRISE, registered effective 1 December 1998 for "vehicle rental services; vehicle leasing services; vehicle towing services; vehicle breakdown recovery services; recovery of vehicles; vehicle rental and leasing, and reservation services for vehicle rental and/or leasing";

b)"Benelux" trademark registration nr. 535637, registered on 13/08/1993;

c) Portuguese trademarks nr. 294355, registered on 31/08/1993, and nr. 294354, registered on 31/08/1993;

d) French trademark nr. 93482205, registered on 02/09/1993;

e) Danish trademark nr. VR 1994 035666, registered on 03/06/1994;

f) European Community Trademark Registration No. 36574 for "E" ENTERPRISE registered effective 1 December 1998 for "vehicle rental

services; vehicle leasing services; vehicle towing services; vehicle breakdown recovery services; recovery of vehicles; vehicle rental and leasing, and reservation services for vehicle rental and/or leasing."

3. All of the above-mentioned trademarks are registered for the various goods and services under the scope of classes 12, 36 and 39 of the International Classification (Nice Agreement concerning the International Classification of Goods and Services for the Purposes of Registration of Marks).

4. The Complainant, via Enterprise Rent-A-Car affiliate operating companies, operates and offers its online business through the following registered domain names:
• www.enterprise.co.uk;
• www.enterprise.de;
• www.enterprise.ca;
• www.enterprise.com;
• www.enterprisecar.eu.

The disputed domain name “enterprize.eu” was, in the meanwhile, registered (owner not disclosed) by PDR Ltd. PublicDomainRegistry.com

5. The Respondent has not demonstrated what comprises his/her economic activity, if any.

A. COMPLAINANT

The Complainant alleges in its initial Complaint fundamentally that:

6. Enterprise Holdings, Inc. (“Complainant “) is the owner of the ENTERPRISE mark for vehicle rental services, which it licenses to the Enterprise Rent-A-Car operating companies.

7. The Enterprise Rent-A-Car operating company operates on-line rental car sites at www.enterprise.co.uk (United Kingdom), www.enterprise.de (Germany), www.enterprise.ca (Canada), www.enterprise.com (United States of America), and www.enterprisecar.eu (Europe).

8. Complainant has registered its ENTERPRISE trademark and owns at least the following registrations in the European Community: European Community Trademark Registration No. 36384 for ENTERPRISE registered effective 1 December 1998 and European Community Trademark Registration No. 36574 for “E” ENTERPRISE, both registered effective 1 December 1998.

9. The domain name <enterprize.eu> is identical or highly similar to the above referenced brand name and trademarks in which the Complainant has prior rights.

10. Respondent’s domain name simply misspells (or in the case of non-American English users correctly spells) Complainant’s trademark, using a “z” instead of an “s”.

11. As such ENTERPRIZE is visually, phonetically and conceptually identical to the ENTERPRISE trademark, both for English speakers as well as non English speakers.

12. The alternate spelling of Complainant’s trademark as “Enterprize” does not sufficiently alter the trademark to avoid the confusingly similar aspects of Respondent’s domain name under the Policy.

13. Respondent registered and is using the <enterprize.eu> domain name to obtain traffic and click-through fees. Respondent’s registration and use of <enterprize.eu> takes advantage of the fact that either by guessing that the .EU web site for Enterprise Rent-A-Car is at <enterprize.eu> and typing “<enterprize.eu> into their browser or through listings in web search engines, some members of the public trying to reach the Enterprise web site will click on a link to the <enterprize.eu> web site. Once at the <enterprize.eu> web site some people will click on the links set-up by the Respondent, thereby providing the Respondent with so-called “click-through fees.”

14. When an Internet users find themselves on the home page for <enterprize.eu> they view a web page with the title “<enterprize.eu>.” That web page at <enterprize.eu> has “Sponsored Listings” to the right and “Related Searches” on the left side.

15. Each of these “Related Searches” is a link to a web site with further “Sponsored Links” to web sites operated by a rental car company (Hertz) or a web site that offers car rental services from various rental car companies, including Enterprise Rent-A-Car competitors.

16. Respondent is using the similarity of the <enterprize.eu> domain name to Complainant's ENTERPRISE trademark to drive traffic to Respondent's web page at <enterprize.eu> and then collect click-through fees when users click on one of the rental car links on the <enterprize.eu> home page.

17. In addition, since Respondent's web page at <enterprize.eu> usually has a link to the "real" Enterprise Rent-A-Car home page, Enterprise Rent-A-Car itself is paying click-through fees for Internet traffic to its Enterprise Rent-A-Car web site generated by Respondent's use of a domain name that is confusingly similar to the ENTERPRISE trademark.

18. At the time the Respondent registered the <enterprize.eu> domain name, the Respondent clearly knew that through search engine listings, guessing or otherwise, some people would be directed to his web site at <enterprize.eu> when seeking the Enterprise Rent-A-Car web site and, as a result, he could use the <enterprize.eu> domain name in a way which confused or is likely to confuse people or businesses into believing that the domain name is registered to, operated or authorised by Enterprise Rent-A-Car.

19. The actions of the Respondent in registering and using the <enterprize.eu> domain name clearly evidence that the Respondent is using, or has registered, the <enterprize.eu> domain name in a way that leads people or businesses to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant or its licensee, Enterprise Rent-A-Car, thus aiming to associate himself with Enterprise Rent-a-Car when no such association exists.

B. RESPONDENT

20. The Respondent has failed to submit a Response to the Complaint; the Respondent, having been regularly notified, is, therefore, in default.

DISCUSSION AND FINDINGS

21. Documentary evidence was provided demonstrating that the Complainant has, for several years, been the proprietor of multiple registrations of the trademark "ENTERPRISE" in a number of countries, namely: European Community Trademark Registration No. 36384 for ENTERPRISE and European Community Trademark Registration No. 36574 for "E" ENTERPRISE, both registered effective as of 1 December 1998.

22. The Complainant as well as its Enterprise Rent-A-Car affiliate operating companies operate and offer their online business through the following registered domain names:
• www.enterprise.co.uk;
• www.enterprise.de;
• www.enterprise.ca;
• www.enterprise.com;
• www.enterprisecar.eu.

23. Despite the use by the Complainant of the domain name www.enterprisecar.eu, among others, the Complainant doesn't possess the requisite legitimacy to be the owner of an .eu TLD, in accordance with Article 4, paragraph 2 (b) of Regulation (EC) 733/2002., given that this domain name is registered by one of the Complainant's affiliate operating companies in Europe and not by the Complainant itself.

To be the owner of an .eu TLD the Complainant would have to have its registered office, central administration or principal place of business within the Community in accordance with Article 4, paragraph 2 (b) (i) of Regulation (EC) 733/2002.

24. To succeed under Article 21 (1) of the Regulation, the Complainant must demonstrate that the Disputed Domain Name:

(a) is identical or confusingly similar to a name in respect of which the Complainant has a recognised right; and

(b) has been registered by its holder without rights or legitimate interests; or

(c) has registered or is being used in bad faith.

A. The Domain Name is Identical or Confusingly Similar

25. The Complainant has provided indisputable evidence that he owns numerous trademark registrations for the "ENTERPRISE "

trademark in various jurisdictions around the world, including two European Community Trademarks as well as trademarks in major European countries (e.g. France, Germany, United Kingdom, Portugal).

26. The disputed domain name <entreprize.eu> differs from the Complainant's registered trademark in one way: the letter “s” has been substituted for the letter “z”. The spelling as “enterprize” is accepted spelling of the word “enterprise” by non-American English speakers. As such, for non-American English speakers, ENTERPRIZE is visually, phonetically and conceptually identical to the ENTERPRISE trademark and may even be construed as the adaptation of the American spelling form into non-American English, for the European market. For non English speakers the two terms are practically identical and may generate confusion with one another. The words are, again, visually, phonetically and conceptually similar.

27. The alternate spelling of the Complainant’s trademark as “Enterprize” does not sufficiently alter the trademark to avoid the confusingly similar aspects of the Respondent’s domain name under the Policy.

28. Although such misspellings should not automatically trigger arguments in favour of cybersquatting (especially when the word is of a generic nature), the fact that the Respondent’s web page at <enterprize.eu> usually hosts links to web sites operated by Enterprise Rent-A-Car competitors and, even, a link to the “real” Enterprise Rent-A-Car home page, it gives rise to suspicion regarding the registration and subsequent use of the disputed domain name and their impact on the legitimate rights of the Complainant.

29. To this end, given the highly related nature between the disputed domain name and the services provided by the Complainant through its trademarks, the Panel finds that the domain name <enterprize.eu> is both confusingly similar to the ENTERPRISE trademark in which the Complainant has rights and confusingly similar to the Complainant's company and trading name.

B. Rights and Legitimate Interests in Relation to the Domain Name

30. The Complainant asserts that the Respondent is using the domain name as a monetized parking/ click-through site, where he offers links to other competing car-rental sites, including Hertz; through this click-through site, the Complainant argues, the Respondent is making commercial use of the disputed domain name by using the similarity of the <enterprize.eu> domain name to Complainant's ENTERPRISE trademark to drive traffic to Respondent's web page at <enterprize.eu> and then collect click-through fees when users click on one of the rental car links on the <enterprize.eu> home page.

31. As was explained in the ADR decision nr. 06500, regarding disputed domain name CROWNPLAZA, “Parking sites are not necessarily indicative of cybersquatting even if they are used for monetization purposes. Given the Internet's use as a means of innovation, creativity and commercial exploitation, parking sites have been seen as constituting business models related to advertising. Similarly, parking sites can provide useful databases, which can further assist users in finding information in the Internet. So, the problem here is not the Respondent's use of the domain name as a parking site or that he is making money through it. The problem is that the Respondent has created a parking site that is using a domain name that is confusingly similar to the Complainant's mark and, through this domain name, he links to other competing websites.”

32. The trademarks invoked by the Complainant are much earlier than the domain name “enterprize.eu” registered by the Respondent.

33. The Complainant holds an internationally recognized brand (ENTERPRISE) throughout the United States, Canada, Ireland, Germany and the United Kingdom, since 1974. Complainant’s affiliated companies have been offering vehicle rental services under the ENTERPRISE trademark in since 1994.
The Complainant holds trademarks that enjoy widespread awareness and significant recognition in a number of countries, where they have established a market.

34. Under such circumstances, it is the Panel’s opinion that registration of the expression “enterprize”, as a domain name, by an unauthorized third party, requires justification based on established rights or other legitimate interests on the part of the Respondent. If there is no such justification, the domain name must be considered speculative or abusive, pursuant to article 21, paragraph 1 (a) of Regulation (EC) 874/2004.

35. In this specific case, the Respondent does not indicate his/her economic activity, or if indeed he/she has any economic activity.

36. More importantly, the Respondent does not invoke any prior rights or other legitimate interests which could justify the requested registration in his favour of the domain name “enterprize.eu”.

37. The Respondent has never used the domain name “enterprize.eu” in connection with any goods or services offered, or demonstrated

any intent to do so in the future.

38. Therefore, one may conclude that given that the Respondent has neither alleged nor demonstrated owning any rights or legitimate interests which could justify the registration of a domain name which uses a sign confusingly similar to the prior trademark “Enterprise” of the Complainant, and given that the latter has provided prima facie evidence that such rights and interests, in this case, do not exist, registration of the domain name “enterprize.eu” by the Respondent is conduct which falls under the provisions of article 21, paragraph 1 (a) of Commission Regulation (EC) 874/2004.

39. In view of the total absence of any rights or legitimate interests of the Respondent to use the Complainant’s prior trademark as a .eu TLD, it is not necessary to ascertain if the domain name in question was or was not registered in bad faith by the Respondent (see, for ex. ADR case nr. 04859), for the Panel to be able to reach a decision.

The Panel notes that the Complainant has its seat in the United States of America. As such the Complainant has not fulfilled eligibility criteria to register a .EU domain name in terms of Article 2(b)(i) or (ii) of Regulation 733/2002. The disputed domain name, which would otherwise have been transferred to the Complainant, is therefore revoked.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name enterprize.eu be revoked.

PANELISTS

Name	**Manuel Felipe Oehen Mendes**

DATE OF PANEL DECISION 2013-11-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: enterprize.eu

II. Country of the Complainant: USA, country of the Respondent: unknown. Registrar: PDR Ltd., www.publicdomainregistry.com

III. Date of registration of the domain name: December 12, 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: European Community Trademark Registration No. 36384 for ENTERPRISE registered effective 1 December 1998 and European Community Trademark Registration No. 36574 for “E” ENTERPRISE, both registered effective 1 December 1998 in respect for goods in classes 12, 36 and 39 of the International Classification (Nice Agreement concerning the International Classification of Goods and Services for the Purposes of Registration of Marks).

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):

1. No

2. Why: the Respondent has created a parking/click-through site that is using a domain name that is confusingly similar to the Complainant's trademark and, through this domain name, he links to other competing websites charging click-through fees.
The Respondent's behaviour indicate that he wished to use the fame, reputation and/or strength of the Complainant's trademark to attract users to his website and, by offering links to the sites of competitors and other vehicle rental services, to monetize and receive substantial economic benefit. This activity works to the detriment of the Complainant and its business.

VIII. Other substantial facts the Panel considers relevant: Eligibility criteria under Article 4 (2) (b) of Regulation (EC) No 733/2002

IX. Dispute Result: Revocation of the disputed domain name

X. Procedural factors the Panel considers relevant: No

XI. [If transfer to Complainant] Is Complainant eligible? No