Panel Decision for dispute CAC-ADREU-004337

Case number	CAC-ADREU-004337
Time of filing	2007-03-16 11:23:32
Domain names	enterprisecarrental.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Enterprise Rent-a-Car UK Limited, David R Haarz

Respondent

Organization / Name	Mary Zeng

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

I am unaware of any other legal proceedings, pending or decided, which relate to the disputed domain name.

FACTUAL BACKGROUND

The Respondent has registered the domain www.enterprisecarrental.eu.

The Complainant operates a vehicle rental business under the mark ‘Enterprise’ and has traded in the UK since 1994. The Complainant states that it uses the ‘Enterprise’ mark under licence from its US parent, which is the proprietor of UK and CTM registrations for the mark in both word and device form and which include registrations in class 39 for vehicle rental services.

The Complainant states that the Respondent has no rights or legitimate interest in the domain and also alleges that the Respondent has used the domain in bad faith. The Complainant seeks the ‘assignment’ of the domain from the Respondent.

The Respondent has not filed a Response to these claims.

A. COMPLAINANT

The Complainant is a UK vehicle rental company. It has operated in the UK since 1994 and now has over 300 branches throughout the UK. It also operates websites at www.enterprise.co.uk and www.enterpriserentacar.co.uk, via which customers may make vehicle reservations. The Complainant’s parent company is a major US corporation, which is the proprietor of UK and Community trade mark registrations for the word mark ‘Enterprise’ and also registrations for a device mark including the words ‘e Enterprise’ and ‘e Enterprise Rent-a-car’. The registrations cover, inter alia, vehicle rental services in class 39. The Complainant maintains that it is the licensee of these marks but it has provided no written evidence in support of this.

The Complainant asserts that the disputed domain is identical or similar to the registered marks and maintains that the ‘carrental’ part of the domain is merely a generic/descriptive element; the ‘Enterprise’ part being the key part of the disputed domain and therefore conflicting with the Complainant’s rights. The Complainant also claims that the Respondent has no rights or legitimate interest in the domain and that the Respondent is using the domain to attract internet users and traffic to the Respondent’s website for commercial gain. The Complainant has submitted evidence is support of these assertions, particularly in the form of copy pages from the website operated by the Respondent prior to the suspension of that domain. Complainant submits that the Respondent does not operate a business called ‘Enterprise car rental’ and does not advertise under that mark.

Complainant states that the domain takes unfair advantage of and is detrimental to the Complainant’s registered trade mark rights and that the Respondent has acted in bad faith. The Complainant asks that the domain be ‘assigned’ to the Complainant.

B. RESPONDENT

The Respondent has failed to file any Response, despite timely reminders and an official notification of default, which also set out the Respondent's rights of challenge.

DISCUSSION AND FINDINGS

In the absence of a Response, I have looked very carefully at the evidence submitted by the Complainant concerning the website operated by the Respondent under the disputed domain. Based on that evidence, the Respondent's website at www.enterprisecarrental.eu appears to have been hosted by a company called Sedo Parking (www.sedoparking.com), which describes itself as "the leading marketplace for buying and selling domain names and websites". The reference to 'Parking' is therefore a reference to domain name parking – which I understand is an arrangement whereby a company, such as Sedo Parking, hosts domains on behalf of the owners of those domains. This hosting does two things – it uses the hosted domains to drive internet traffic, which thereby earns click-through revenues, while also offering the hosted domains for sale to the highest bidder.

From the evidence submitted by the Complainant, it appears that this is the 'use' to which the Respondent put the disputed domain prior to its suspension. Specifically, the Respondent created a website (hosted by Sedo Parking) under the domain, which provided links to a number of websites operated by car rental companies, many of which appear to be direct competitors of the Complainant. By directing traffic in this way, the Respondent and/or Sedo Parking were in a position to profit from their activities. Importantly, the excerpts of the Respondent website submitted by the Complainant also state that the website www.enterprisecarrental.eu "is for sale!". In this context, the 'website' is equivalent to the domain.

Article 21(1) of Regulation 874/2004 states:

"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:
(a) has been registered by its holder without rights or legitimate
interest in the name; or
(b) has been registered or is being used in bad faith."

In my view, the Complainant has submitted evidence which demonstrates that the domain is similar to a name in respect of which rights are recognised by applicable law. In this respect, I agree with the Complainant that the domain is confusingly similar to the registered rights submitted by the Complainant. I also agree that the key component of the domain is the word 'Enterprise' and that the 'carrental' element is descriptive or generic.

From the evidence before me, I can see nothing which indicates that the Respondent has any right or legitimate interest in the domain. The Respondent has had an opportunity to demonstrate any such rights but has failed to do so. I am therefore satisfied that the Article 21(1)(a) grounds are made out.

It also appears to me that the Article 21(1)(b) grounds are made out and that the Respondent used the domain in bad faith. In particular, I am satisfied that bad faith is demonstrated, inter alia, pursuant to Regulation 874/2004 Article 21(3) (a) and (d), in that it appears that the Respondent registered the domain with the primary purpose of selling the domain and also used the domain intentionally to attract Internet users for commercial gain. The activities carried on by the Respondent seem to be the very embodiment of bad faith and represent exactly the type of activity which the Council Regulations, in both their spirit and letter, seek to prevent.

For these reasons, I have decided that the Respondent's ownership of the domain should be revoked.

The Complainant has asked that the domain be 'assigned' to the Complainant. My concern in this respect is the lack of evidence submitted by the Complainant concerning the existence of a formal licence in favour of the Complainant. However, on balance, I am satisfied that the general eligibility requirements of Article 4(2), Regulation 733/2002 have been met. I also consider that the Complainant must have a licence of some sort from the Complainant's parent company , whether written or otherwise, to operate a car rental business in the UK under the 'Enterprise' mark and, given the specific reference to 'carrental' in the domain, I am satisfied that the Complainant is also entitled to transfer of the domain.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name ENTERPRISECARRENTAL be revoked; and

the domain name ENTERPRISECARRENTAL be transferred to the Complainant

PANELISTS

Name	**James Mitchell**

DATE OF PANEL DECISION 2007-06-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Respondent registered the domain www.enterprisecarrental.eu and created a website associated with the domain, which provided links to a number of websites operated by car rental companies, many of which appear to be direct competitors of the Complainant. By directing traffic in this way, the Respondent was in a position to profit from its activities. The excerpts of the Respondent website submitted by the Complainant also state that the website www.enterprisecarrental.eu “is for sale!”.

The Complainant's parent company is the owner of both UK and European Community registered trade marks for the word mark 'Enterprise' and also a device mark which incorporates the mark 'Enterprise' - each of which are registered, inter alia, in class 39, covering vehicle rental. The Complainant has operated a vehicle rental business in the UK since 1994 and uses the 'Enterprise' mark under license from its parent company. The Complainant has therefore submitted evidence which demonstrates that the domain is similar to a name in respect of which rights are recognised by applicable law.

From the evidence before me, I can see nothing which indicates that the Respondent has any right or legitimate interest in the domain. The Respondent has had an opportunity to demonstrate any such rights but has failed to do so. I am therefore satisfied that the Complainant has satisfied the requirement of Article 21(1) of Regulation 874/2004 Article 21(1)(a).

It also appears to me that the Article 21(1)(b) grounds are made out and that the Respondent used the domain in bad faith. In particular, I am satisfied that bad faith is demonstrated, inter alia, pursuant to Regulation 874/2004 Article 21(3) (a) and (d), in that it appears that the Respondent registered the domain with the primary purpose of selling the domain and also used the domain intentionally to attract Internet users for commercial gain. The activities carried on by the Respondent seem to be the very embodiment of bad faith and represent exactly the type of activity which the Council Regulations, in both their spirit and letter, seek to prevent.

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