



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

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| CIIDRC case number: | 15224-CDRP | Decision date: May 27, 2021 |
| Domain Name: | enterpriserent.ca | |
| Panel: | R. John Rogers, Chair Claude Freeman, L.L.M., C. Med., C.Arb. Leslie E. Maerov, FCI Arb., Q.Arb. | |
| Complainant: | Enterprise Holdings, Inc. | |
| Complainant's representatives: | Josh A. Partington, Lisabeth H. Coakley and Elizabeth K. Brock of Dickey & Pierce, PLC | |
| Registrant: | EIKERMANN ENTERPRISE/ Chengqian Yu | |
| Registrar: | Tucows.com Co. | |

1. PROCEDURAL HISTORY

The Canadian International Dispute Resolution Centre (“CIIDRC”) is a recognized service provider pursuant to the Domain Name Dispute Resolution Policy (v 1.3) (the “Policy”) and Rules (the “Rules”) of the Canadian Internet Registration Authority (“CIRA”).

On April 12, 2021, the Complainant filed a complaint (the “Original Complaint”) with CIIDRC. In the Original Complaint, the Complainant sought an order in accordance with the Policy and the Rules directing that the registration of the domain name <enterpriserent.ca> (the “Domain Name”) be transferred to the Complainant.

As the identity of the owner of the Domain Name is redacted for privacy in the WHOIS database, in the Original Complaint the Complainant did not identify the owner of the Domain Name. CIRA subsequently identified the owner of the Domain Name as above set out (the “Registrant”) and the contact details to be as follows:

EIKERMANN ENTERPRISE / Chengqian Yu
297 Julia Valentina Ave
Woodridge, ON L4H 1Z5
Email : irvine@ttbeuottawa.com

Once it was notified of the identity of this owner, the Complainant, pursuant to the provisions of Paragraph 11.1 of the Rules, amended the Original Complaint to identify the Registrant and filed an amended complaint dated April 18, 2021 (the “Complaint”).

CIIDRC determined the Complaint to be in administrative compliance with the requirements of Paragraph 3.2 of the Rules and by way of an emailed letter dated April 13, 2021 (the “Transmittal Letter”) forwarded a copy of the Complaint to the Registrant at the email address for the Registrant as set out in the WHOIS database to serve as notice of the Complaint to the Registrant in accordance with Paragraphs 2.1 and 4.3 of the Rules. The Transmittal Letter determined the date of the commencement of proceedings in accordance with Paragraph 4.4 of the Rules to be April 13, 2021. The Transmittal Letter advised the Registrant that in accordance with the provisions of Paragraph 5 of the Rules, a Response to the Complaint was to be filed within 20 days of the date of commencement of proceedings, or May 6, 2021.

On May 18, 2021, Mike Eikermann filed with CIIDRC an affidavit dated May 18, 2021 deposing that:

1. He has in the past used the name “Eikermann Enterprise” as a sole proprietorship for his home business, but that this name is currently dormant,
2. He does not know anyone by the name of Chengqian Yu,
3. He does not know anyone with the email: irvine@tbeuottawa.com,
4. Neither he nor Eikermann Enterprise registered the Domain Name, and
5. Eikermann Enterprise is not affiliated with Chengqian Yu or the email address: irvine@tbeuottawa.com.

The undersigned were appointed by CIIDRC as the three Panellists in this matter pursuant to Paragraph 6 of the Rules by letter dated May 19, 2021. The undersigned have confirmed to CIIDRC that they can act impartially and independently as the Panel in this matter.

The Panel determines that it has been properly appointed and constituted to determine the Complaint in accordance with the Rules.

2. FACTS ALLEGED BY THE PARTIES

The Complainant

The facts in the Complaint can be summarized as follows:

1. The Complainant, Enterprise Holdings, Inc., is a company with an office located at 600 Corporate Drive, St. Louis, Missouri, 63105, and, since 1974, has carried on business in the United States, Canada, Ireland, Germany and the United Kingdom.
2. The Complainant is the registered owner of the trademark ENTERPRISE (the “Mark”) in Canada, which registration it has maintain since 2000.
3. The Complainant currently owns eighteen active Canadian trademark filings for marks including the Mark and the word “rent”.
4. The Complainant licenses the Mark to Enterprise Rent-A-Car operating entities and has done so in Canada since 1984 for use in connection with car rental and leasing services.
5. The Complainant’s licensees of the Mark operate online car rental and leasing services through sites to which the domain names <enterprise.ca> and <enterprise.com> resolve.
6. The Domain Name was registered on October 20, 2020.
7. The Complainant has not authorized the Registrant to use the Mark and the Complainant has no relationship whatsoever with the Registrant.
8. A Google search for “Enterprise Rent in Canada” returns only reference to the Complainant.
9. The Domain Name currently resolves to a default website page.

The Registrant

No Response has been filed.

3. CONTENTIONS OF THE PARTIES

The Complainant

The Complainant submits that the purpose for registering the Domain Name was to attract potential customers attempting to access the Enterprise Rent-A-Car Canadian website at <enterprise.ca> or other similar online locations associated with

the Complainant by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of the website to which the Domain Name resolves or of a product or service on this website.

The Registrant

As noted above, no Response has been filed.

The Remedy Sought

The Complainant seeks an order from the Panel in accordance with Paragraph 4 of the Policy and Paragraph 12 of the Rules that the Domain Name be transferred to the Complainant.

4. DISCUSSION AND FINDINGS

4.1 Canadian Presence Requirements

Paragraph 1.4 of the Policy requires that in order to initiate the Complaint, the Complainant at the time of the initiation of the Complaint must satisfy the Canadian Presence Requirements for Registrants v 1.3 (“Canadian Presence Requirements”) unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of that trademark.

The evidence before the Panel is that the Complainant is the owner of the Mark together with other related trademarks registered in the CIPO at the date of the Complaint and that the Complaint relates to the Mark.

The Panel therefore determines that the Complainant has satisfied the provisions of paragraph 1.4 of the Policy.

4.2 The Policy

The purpose of the Policy, as stated in Paragraph 1.1 of the Policy as referenced above, is to provide a forum in which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly.

Paragraph 4.1 of the Policy puts the onus on the Complainant to demonstrate this “bad faith registration” by proving on a balance of probabilities that:

1. The Mark qualifies as a “Mark” as defined in Paragraph 3.2 of the Policy,
2. the Complainant had “Rights” in the Mark prior to the date of registration of the Domain Name and continues to have “Rights” in the Mark,
3. the Domain Name is “Confusingly Similar” to one or more of the registrations comprising the Mark as the concept of “Confusingly Similar” is defined in Paragraph 3.3 of the Policy,
4. The Registrant does not have a “legitimate interest” in the Domain Name as the concept of “legitimate interest” is defined in Paragraph 3.4 of the Policy, and
5. the Registrant or an unknown third party has registered the Domain Name in “bad faith” in accordance with the definition of “bad faith” contained in Paragraph 3.5 of the Policy.

If the Complainant is unable to satisfy this onus, bad faith registration is not demonstrated, and the Complaint fails.

4.3 Notice to the Registrant

As noted above, after CIIDRC had determined the Complaint to be in administrative compliance with the requirements of Paragraph 3.2 of the Rules, by way of the emailed Transmittal Letter dated April 13, 2021, CIIDRC forwarded a copy of the Complaint to the Registrant in accordance with Paragraphs 2.1 and 4.3 of the Rules. As CIIDRC was later advised, the party to whom the Transmittal Letter together with a copy of the Complaint was sent professes to have not registered the Domain Name and to have no association with the individual or the email address included in the registration information provided under the Domain Name’s registration in the WHOIS database.

This advice to CIIDRC begs the question as to whether or not the Registrant has been given proper notice of the Complaint in accordance with the Policy and the Rules in order to be given an opportunity to file a Response to the Complaint.

Paragraph 2 of the Rules entitled “Communications” requires that CIIDRC give to a registrant notice of a complaint being filed against a domain name which is registered in the name of the registrant. Such notice will be deemed to have been given to this registrant provided that CIIDRC uses one of the various methods of communication as listed in Paragraph 2, and provided that such communication is directed to the address shown in the registration information for that registrant for the domain name in question.

The term “Registration Information” is defined in the Rules as:

“**Registration Information**” means the information of record regarding a Registration in the Registry’s WHOIS database:

It is clear from the evidence before the Panel that CIIDRC in forwarding a copy of the Transmittal Letter and a copy of the Complaint to the party and to the address set forth as the registration information in the WHOIS database with respect to the Domain Name, that CIIDRC complied with the notice provision contained in Paragraph 2 of the Rules.

The Panel, therefore, finds that the Registrant is deemed to have been given notice of the Complaint.

4.4 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

Mark

In the matter at hand, the relevant portions of Paragraph 3.2 of the Policy states that for the purpose of the Policy a “Mark” is:

- (a) a trademark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;

Since 1984, the Complainant has used the Mark in Canada to distinguish its provision of wares, services or business from another provider of similar wares, services or business.

This use by the Complainant of the Mark commenced well before the registration of the Domain Name on October 20, 2020.

The Complainant continues to so use the Mark in Canada.

The Panel finds that the Complainant has established that the Mark qualifies as a “Mark” for the purposes of Paragraph 3.2(a) of the Policy.

Rights

Paragraph 3.1 of the Policy requires that the Complainant has “Rights” in the Mark. Unfortunately, the term “Rights” is not defined in the Policy.

However, given the evidence before the Panel of the Complainant’s ownership and use of the Mark in Canada, the Panel finds that the Complainant has “Rights” in the Mark for the purpose of Paragraph 3.1 of the Policy.

Confusingly Similar

The Policy in Paragraph 3.3 provides that the Domain Name will be found to be “Confusingly Similar” to the Mark only if the Domain Name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as likely to be mistaken for the Mark.

As Paragraph 1.2 of the Policy defines the Domain Name for the purpose of this proceeding to exclude the .ca suffix, the portion of the Domain Name consisting of “enterpriserent” is the portion of the Domain Name relevant for consideration.

The Domain Name consists of the word “enterprise” together with the generic term “rent”. To satisfy the onus placed upon it by the Policy, the Complainant must demonstrate that the addition of the word “rent” to the Mark in the Domain Name is not sufficient to distinguish the Domain Name from the Mark so that the Domain Name can not be said to so nearly resemble the Mark in appearance, sound or the ideas suggested by the Mark as likely to be mistaken for the Mark.

The test to be applied when considering confusing similarity is one of first impression and imperfect recollection. Will a person as a matter of first impression, knowing only the complainant’s corresponding trademark, and having imperfect

recollection of this trademark, likely mistake the disputed domain name for the complainant's trademark based upon the appearance, sound or the idea suggested by the trademark?

In the matter at hand, the Panel finds that the Mark is sufficiently known in Canada as reflecting the goodwill of licensees of the Mark from the Complainant who are engaged in the business of renting vehicles. The Panel is, therefore, satisfied that the Complainant has met the confusingly similar requirement of Paragraph 3.3 despite the addition of the word "rent" to the Mark. In fact, the Panel finds that the addition of the word "rent" in the Domain Name increases the likelihood that a person would associate the Domain Name with the Mark given that renting vehicles is a primary service covered by the Mark.

The Panel finds that the Complainant has met the onus placed upon it by Paragraph 3.3 of the Policy and has demonstrated that the Domain Name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.

4.5 That the Registrant has No Legitimate Interest in the Domain Name

Paragraph 4.1 of the Policy requires that to succeed in the Complaint, the Complainant must provide some evidence that the Registrant has no legitimate interest in the Domain Name as the concept of "legitimate interest" is provided for in Paragraph 3.4 of the Policy.

Paragraph 3.4 of the Policy provides that the Registrant has a legitimate interest in a domain name if:

- a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of:
 - (i) the character or quality of the wares, services or business;
 - (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or
 - (iii) the place of origin of the wares, services or business;
- c) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In Paragraph 3.4(d) "use" by the Registrant includes, but is not limited to, use to identify a website.

It is to be noted that with respect to the matter at hand, in Paragraphs 3.4(a), (b), (c), and (d), there is a requirement that the Registrants act "in good faith". There is no evidence before the Panel that the Registrant used the Domain Name and the website to which the Domain Name resolves in good faith. Rather, there is a strong suggestion that the Respondent, whoever that party might be, used the Domain Name to trade upon the goodwill of the Complainant without a license to do so.

Therefore, the provisions of these paragraphs do not apply.

The Registrant's name would appear not to be included in the Domain Name nor is there a geographical reference in the Domain Name, so the provisions of Paragraph 3.4(e) and Paragraph 3.4(f) do not apply.

The Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name.

4.6 That the Registrant has Registered the Domain Name in Bad Faith

Under Paragraph 3.5 of the Policy, the Registrant will be considered to have registered the Domain Name in bad faith if, and only if, the Complainant can demonstrate that the Registrant in effecting the registration of the Domain Name was motivated by any one of the four general intentions set out in Paragraph 3.5.

Of these intentions, the form of intention contained in Paragraph 3.5(d) is the one most applicable to the matter at hand.

Paragraph 3.5(d) provides as follows:

- (d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website 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 the Registrant's website or location or of a product or service on the Registrant's website or location.

Based upon the evidence before the Panel and especially the Registrant's failure to provide accurate information in the registration information with respect to the Domain Name, the Panel finds that the Complainant has satisfied the provisions of Paragraph 3.5 (d) of the Policy by establishing that that the Registrant has intentionally attempted to attract for commercial gain traffic to the website to which the Domain Name resolves by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of such website.

5 **DECISION and ORDER**

5.1 Decision

As was above set out, Paragraph 4.1 of the Policy provides that to be successful in the Complaint the Complainant has the onus of proving on a balance of probabilities three specific items and of providing some evidence that the Registrant has no legitimate interest in the Domain Name.

The Panel finds that the Complainant has satisfied this onus with respect to all three of these items by demonstrating that the Mark qualifies as a Mark in accordance with Paragraph 3.2 of the Policy; that the Domain Name is Confusingly Similar to the Mark; and that the Registrant has registered the Domain Name in bad faith in accordance with the provisions of Paragraph 3.5 of the Policy.

The Panel also finds that the Complainant has shown some evidence that the Registrant does not have a legitimate interest in the Domain Name in accordance with the provisions of Paragraph 3.4 of the Policy.

The Panel therefore finds that the Complainant has satisfied the onus placed upon it by Paragraph 4.1 of the Policy and is entitled to the remedy sought by it.

5.2 Order

The Complainant in the Complaint seeks an order in accordance with the Policy and the Rules directing that the registration of the Domain Name be transferred from the Registrant to the Complainant.

Section 2 of the Canadian Presence Requirements lists the types of individuals and entities who are permitted to apply for the registration of and to hold and maintain the registration of a .ca domain name. As the Complaint provides that the Complainant consists of an American corporation, the only provision of Section 2 of the Canadian Presence Requirements which applies to the Complainant is section 2 (q) which states:

- 2 (q) Trade-mark registered in Canada.** A Person which does not meet any of the foregoing conditions, but which is the owner of a trade-mark which is the subject of a registration under the *Trade-marks Act* (Canada) R.S.C. 1985, c.T-13 as amended from time to time, but in this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark; or

The Panel finds that the Domain Name includes the exact word component of the Mark and that therefore the Complainant is permitted to hold and maintain the registration of the Domain Name.

For the above reasons, in accordance with Paragraph 4 of the Policy and Paragraph 12 of the Rules, the Panel orders that the domain name <enterpriserent.ca> be transferred to the Complainant.

Made as of May 27, 2021.

SIGNATURE OF PANEL

“R. John Rogers”

R. John Rogers, Chair

“Claude Freeman”

Claude Freeman, L.L.M., C. Med., C.Arb.

”Leslie E. Maerov”

Leslie E. Maerov, FCI Arb., Q.Arb.

