

ADMINISTRATIVE PANEL DECISION

Enterprise Holdings, Inc. v. Jamel Toms, Enterprize Software
Case No. DIO2022-0060

1. The Parties

The Complainant is Enterprise Holdings, Inc., United States of America (“United States”), represented Harness, Dickey & Pierce, PLC., United States.

The Respondent is Jamel Toms, Enterprize Software, United States.

2. The Domain Name and Registrar

The disputed domain name <enterprize.io> is registered with Gandi SAS (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 11, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on February 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant owns and licenses the trademark ENTERPRISE (the “Mark”) to Enterprise Rent-A-Car and other affiliated operating entities in various countries including, but not limited to, the United States, Canada, Ireland, Germany, and the United Kingdom. The Complainant and its affiliated companies employ approximately 80,000 persons worldwide and own 1.7 million cars and trucks.

The Complainant owns the domain name <enterprise.com> that resolves to Enterprise Rent-A-Car’s principal e-commerce website.

The Complainant owns numerous registrations for the Mark with the earliest being United States Patent and Trademark Office Reg. No. 1,343,167 dated June 18, 1985.

The disputed domain name was registered on July 30, 2019. The disputed domain name does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name varies from the Mark by merely the changing the letter “s” in the Mark to “z” in the disputed domain name. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not commonly known as, operating a business as, or advertising as the disputed domain name, and that the Respondent has never engaged in any *bona fide* commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew or should have known of the Mark with a reasonable investigation and registered and used the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s Mark.

The disputed domain name is confusingly similar to the Mark because the disputed domain name differs from the Mark only by the changing the letter “s” in the Mark to the letter “z” in the disputed domain name. The slight change in spelling of protected trademark in a disputed domain name does not prevent a finding of confusing similarity. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first

element. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.¹

The Top-Level Domain of the disputed domain name, in this case ".io", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel finds on the evidence presented that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. The Complainant has established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name. The disputed domain name appears never to have resolved to an active website, and the disputed domain name will likely confuse unsuspecting Internet users into believing the disputed domain name will resolve to a website sponsored or affiliated with the Complainant.

The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on the respondent's website or location.

¹ Given the similarities between the .IO Policy and Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules, the Panel finds UDRP precedent to be relevant to this case.

The Panel finds on the evidence presented that the disputed domain name was registered and is being used in bad faith.

A simple Internet search, normally undertaken before registering a domain name, would have disclosed the Complainant's Mark. Moreover, the Mark and the Complainant's car rental services are well known in the United States where the Respondent resides. The disputed domain name alters the Mark only by changing the letter "s" to the letter "z" which creates a phonetic equivalence. On balance, the Panel finds that the Respondent was likely aware of the Complainant's well-known Mark when registering and using the disputed domain name to attract unsuspecting Internet users to the Respondent's website.

The inactive status of the disputed domain name is irrelevant as the continued registration of the disputed domain name constitutes a threat hanging over the Complainant. Internet visitors may incorrectly draw negative inferences about the Complainant when seeing that the disputed domain name resolves to an inactive website. Under the circumstances of this case and the doctrine of passive holding, the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), sections 3.3 and 3.2.1.

The Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <enterprize.io> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: February 24, 2023