



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

CIIDRC case number:	20097-CDRP	Decision date: March 22, 2023
Domain Name:	Enterpriseautofinance.ca	
Panel:	Gerald M. Levine Ph.D., Esq.	
Complainant:	Enterprise Holdings, Inc.	
Complainant's representative:	Harness, Dickey & Pierce, PLC	
Registrant:	Tamim Ahmmadzai	

1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

According to the information provided by the CIIDRC:

1. Complainant filed a Complaint with respect to the disputed domain name in accordance with the Canadian Dispute Resolution Policy (the "Policy") on February 15, 2023 (the "Complaint");
2. The Complaint caption reflects the Registrant of <enterpriseautofinance.ca> (the "Disputed Domain Name") as "Redacted for Privacy";
3. CIRA was notified of the proceeding on February 15, 2023 and on the same date, CIRA transmitted by email to CIIDRC its verification response informing the Registrant's identity as Tamim Ahmmadzai. CIRA also confirmed that the disputed domain name was placed on a Registrar LOCK.
4. CIIDRC as service provider reviewed the Complaint and by letter dated February 15, 2023 found it administratively compliant. It forwarded a copy of the Complaint to Registrant by email on that date. By the

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same communication, CIIDRC informed the parties that in accordance with Rule 4.4 the date of commencement of the Proceeding was February 15, 2023 and that any Response had to be filed by March 7, 2023. CIIDRC also mailed a copy to the address provided by CIRA. Tracking provided by Canada Post shows that it was delivered on February 20, 2023.

5. In accordance with Paragraph 11.1 of the CIRA Rules, the Complainant filed a Further Submission on March 9, 2023 supplementing the Complaint to reflect Tamim Ahmmadzai as disclosed Registrant together with additional annexes together with a Declaration of Joel S. Samuels, Esq. A copy of the Further Submission was sent to the Respondent.
6. The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.
7. The Registrant did not formally or informally respond to the Complaint or the Further Submission;
8. On March 10, 2023, CIIDRC appointed Gerald M. Levine as sole Panel. Mr. Levine has signed and forwarded to CIIDRC his Acceptances of Appointment together with a Statement of Independence and Impartiality.
9. The Panel has reviewed all of the material submitted by Complainant and is satisfied that it is an eligible complainant under the Policy and the Rules by virtue of its ownership of the trademark ENTERPRISE, registration number TMA508117 for ENTERPRISE, registered with the Canadian Intellectual Property Office on 16 February 1999, together with evidence of 8 other registrations with the Canadian Intellectual Property Office, all of which predate the registration of <enterpriseautofinance.ca>;
10. The Panel is unaware of any other proceedings which may have been undertaken by the parties or others in the present matter.

The Disputed Domain Name <enterpriseautofance.ca> was registered on August 13, 2020.

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority.

2. FACTS ALLEGED BY THE PARTIES

Complainant:

Complainant, Enterprise Holdings, Inc. states that it is the owner of the ENTERPRISE Mark, which it licenses to Enterprise Rent-A-Car and other operating entities (collectively "Enterprise"). Enterprise is an internationally recognized brand serving the vehicle rental and leasing needs of customers, including both business and holiday travelers, throughout the United States, Canada, Ireland, Germany, the United Kingdom, and other countries throughout the world. The ENTERPRISE Mark has been used in Canada in connection with car rentals and leasing services since at least as early as 1984. Complainant operates webpages at enterprise.ca and enterprise.com for its vehicle rental services.

Additionally, Enterprise operates a vehicles sales business, Enterprise Car Sales, in the US and offers financing options to its customers. In relation to its vehicle sales business and financing options, Complainant has established US common law rights in the ENTERPRISE AUTO FINANCE trademark since at least as early as 2015. The ENTERPRISE AUTO FINANCE trademark is used with Enterprise's authorization at enterpriseautosales.com/financing and hase.com/personal/auto-loans/enterprise, which is also accessible through enterpriseautofinance.com.

In addition to the enumerated trademarks registered in Canada, the Complainant also states that the Complainant owns pending Canadian Trademark application no. 2015913, for ENTERPRISE AUTO FINANCE, filed 05 March 2020 as well as pending United States Application Serial No. 90/022,911, for ENTERPRISE AUTO FINANCE, filed 26 June 2020. Complainant also owns pending Canadian Trademark application no. 2012013, for ENTERPRISE REFINANCING, filed 14 February 2020.

The Panel notes that with respect to the Pending Canadian Trademark application no. 2015913 for ENTERPRISE AUTO FINANCE that a Letter of Suspension is on file dated July 29, 2022. The Panel also notes that Complainant has received a "Suspension Notice" on its pending United States Application for ENTERPRISE AUTO FINANCE dated July 29, 2020. Thus, Complainant's statements to the contrary are misleading as to the status of the pending applications and unacceptable. See Rules Appendix a, Paragraph 3, Certification. Panels rely on the truthfulness and completeness of a complainant's pleading. In this particular case, as further discussed below, these misleading statements do not affect the outcome of the decision as further announced below.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant alleges that the Respondent has registered the Disputed Domain Name which is confusingly similar to ENTERPRISE and identical to its common law mark ENTERPRISE AUTO FINANCE. Both the registered and unregistered marks predate the registration of the Disputed Domain Name. Further, the Complainant alleges that it did not give the Registrant permission to register the Disputed Domain Name, that the Respondent has no legitimate interest in the Disputed Domain Name, and concludes that the Registrant registered the Disputed Domain Name in bad faith.

- **Registrant**

The Registrant has not appeared formally, although it has informally acknowledged receiving the Complaint in a telephone call and text exchange with Complainant's counsel (evidenced by a transcript of the text exchange and Declaration of Joel R. Samuels, Esq.). In this text exchange Respondent offered to sell the Disputed

Domain Name to Complainant for 30K USD and in a further interaction for 20K for two domain names incorporating Complainant's ENTERPRISE mark.

As the Complainant does not include in the instant Complaint a claim against the second domain name, <enterprisefinance.ca> the Panel makes no further reference to it.

- **Remedy Sought**

The Complainant requests the Disputed Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Eligibility

The Complainant is an eligible complainant under paragraph 1.4 of the CDRP.

4.2 Requirements

In accordance with Paragraph 4.1 of the CDRP, the onus is on the Complainant to prove:

- (a) That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights:
- (b) That the Domain Name has been registered in bad faith.

and the Complainant must provide some evidence that:

- (c) That the Registrant has no legitimate interests in the Domain Name.

The Panel will consider each of these requirements in turn.

4.3 Analysis

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

Paragraph 3.3 of the Policy provides that a domain name will be considered confusingly similar to a trademark if 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." CIRA Policy, sub-para. 3.1(a) provides that "the Registrant's dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had rights prior to the date of registration of the domain name and continues to have such Rights."

The evidence submitted by the Complainant establishes that it has registered rights to the term ENTERPRISE and asserts unregistered rights to the term ENTERPRISE AUTO FINANCE. The dominant term in both the registered and alleged unregistered marks is a common word "Enterprise" which by itself may be similar but not

confusing. However, in comparing the Disputed Domain Name with the registered mark and taking into account the Complainant's business operations, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's mark. This is because the addition of the words "auto" and "finance" do not distinguish the Disputed Domain Name from the Complainant's mark, but rather underscores the similarity in that these words reference the business the Complainant operates under the registered mark. See *Enterprise Holdings, Inc. v. EIKERMANN ENTERPRISE/ Chengqian Yu* 15224-CDRP (CIIRDRC May 27, 2021) ("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.")

With regard to the Complainant's contention that it has common law rights to ENTERPRISE AUTO FINANCE, the Panel accepts the evidence annexed to its Complaint that the Complainant has used the term since 2015 which predates the registration of the Disputed Domain Name. The Disputed Domain Name is identical to the unregistered (common law) mark.

Accordingly, Complainant has satisfied its burden under subparagraph 4.1(a) of the CDRP.

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

Sub-paragraph 3.1(b) of the Policy requires the Complainant to prove on a balance of probabilities that "the Registrant has no legitimate interest in the domain name." In the text exchange previously referred to, the Respondent alleged that it acquired the Disputed Domain Name in connection with various business operations, although the Disputed Domain Name resolves to a website that contains hyperlinks to businesses in the auto industry and makes no mention of the businesses the Respondent claims to have. The Complainant has adduced evidence that there are no trademark filings for the Respondent; that a search of Canada's Business Registries for the Respondent finds no active or inactive business in the name of Tamim Ahmmadzai; and that a Google search for Tamim Ahmmadzai does not return any evidence that he has any business for which "Enterprise Auto Finance" would plausibly act as a moniker.

The Complainant states that it has not licensed or authorized the Registrant to use ENTERPRISE or ENTERPRISE AUTO FINANCE and Complainant has no relationship whatsoever with the Registrant. Previous panels have held that the assertion that the registrant had not received authorization to use the complainant's trademarks was considered to be "some evidence" that the registrant did not have a legitimate interest under paragraph 3.4(a) of the Policy. The Complainant cited for this proposition *General Motors LLC v. DS1 Design*, CIRA Dispute No. 00231 (Resolution Canada May 29, 2013) at paras 39-40.) This Panel concurs with this proposition on the premise that were it otherwise the Respondent would have no hesitation to appear and rebut Complainant's contentions.

As the Complainant has demonstrated prima facie that the Respondent has no legitimate interest in the domain name, the burden shifts to the Respondent to produce evidence that it does. The Policy provides at Paragraph 3.4 Legitimate Interests that “For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

- (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 registered 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 registered 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.

The Complainant alleges that the Registrant’s use of the Disputed Domain Name does not satisfy any of the criteria set out in Paragraph 3.4 of the Policy in this case. The Respondent has not formally responded to the Complaint, but has appeared informally in a recorded chat. That evidence supports the conclusion that the Respondent has no legitimate interest in the Disputed Domain Name.

The Complainant further argues in its Complaint and Further Submission that there is nothing to indicate that “enterprise auto finance” is the name or surname or other reference by which Registrant is known. The <enterpriseautofinance.ca > domain name is also not a geographical name corresponding to Registrant’s activity or place or business.

The Complainant has entered into the record screen shots of Respondent’s website and contends that they make no reference to any businesses operated by Respondent. The Panel accepts this as further evidence that the Respondent has no legitimate interest in the Disputed Domain Name. See *Payless ShoeSource Worldwide, Inc. v. Mike Leigh* DCA-1927-CIRA (BCICAC December 20, 2017) (“There is

no evidence that the Registrant ever used or is preparing to use the Domain Name in connection with any bona fide wares or services.

The only inference that can be drawn from this totality of evidence and the Respondent's own words in the text exchange must be that the contentions that the Respondent lacks legitimate interests are unrebuttable.

For these reasons, the Panel finds that the Complainant has satisfied its burden under subparagraph 4.1(b) of the Policy.

4.3.3 that the Registrant has Registered the Domain Name in Bad Faith

Policy paragraph 3.1(c) requires the Complainant to prove, on the balance of probabilities, that the Registrant registered the domain name at issue in bad faith. Paragraph 3.5 of the Policy sets forth a non-exhaustive list of circumstances for determining whether a registrant registered a domain name in "bad faith." The Complainant argues that subparagraphs c) and d) are inculpatory of bad faith. The Panel concurs, but the totality of evidence also supports subparagraph a):

- a) the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration; and

[. . .]

- c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant; or
- 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.

The Complainant argues that previous decisions pursuant to the Policy have observed that a Complainant will rarely have direct evidence of bad faith registration and that the purpose behind registering a domain name can often be discerned by common sense inferences of a registrant's conduct and the surrounding circumstances. The Panel concurs that this summarizes the consensus view under the CIRA Policy.

Taking the three subparagraphs *seriatim*. The concept under subparagraph a) is that the registrant's "primary purpose" in registering a disputed domain name is to sell it to the complainant or a competitor. The Panel finds based on the submitted evidence that in registering the Disputed Domain Name the Respondent had the Complainant in mind.

For the reasons that I will consider further, there could be no other target than the Complainant, as there would for example, if the disputed domain was <enterprise.com>. Violation under subparagraph (a) is supported also by the Respondent's interactive "chat" with Complainant's counsel and a later text message.

Although Respondent has not appeared formally to admit or deny its conduct and use, it has left inculpatory footmarks of its intentions: "I paid more to make the website that was seriously a joke from enterprise my time[sic] my business if they really care that much to take my website down they can give me 30K usd or I'll just take it to my lawyer to deal with it." And, quoting from Complainant's Counsel's Declaration, "On February 23, 2022, the Registrant sent a text message stating that they are owner[sic] of both the enterpriseautofinance.ca domain name and enterprisefinance.ca and demanded \$20,000 USD for both domains or they would 'just go to court.'" From this, the logical inference is that the Respondent had the Complainant in mind and was targeting it.

By its demand for the Disputed Domain Name, Respondent tacitly confirmed its primary purpose was to profit from the value of the trademark, but if this is not alone the basis for this finding.

This inference that the Respondent registered the Disputed Domain Name in bad faith is bolstered by circumstantial evidence of the Respondent's awareness, even actual knowledge of the Complainant.

The Complainant argues that "[a]t the time Registrant registered the **enterpriseautofinance.ca** domain name [. . .] the Registrant had constructive notice of Complainant's rights in the ENTERPRISE mark. Additionally, the **enterpriseautofinance.ca** domain name was registered less than a month after Complainant filed its ENTERPRISE AUTO FINANCE trademark application." It is of course telling that the registration of the Disputed Domain Name occurred "less than a month after Complainant filed its ENTERPRISE AUTO FINANCE trademark application," but the evidence in this case is rather actual than constructive notice. The Respondent opportunistically registered the Disputed Domain Name with actual notice of the Complainant's use the ENTERPRISE AUTO FINANCE mark. Use in the market supports the conclusion of common rights. Based on the evidence adduced by the Complainant, it enjoyed common law rights to the term "Enterprise Auto Finance" that predated the registration of the Disputed Domain Name.

Turning to subparagraphs c) and d), the Panel finds that it is not uncommon to combine these two circumstances, as any bad faith use of a disputed domain name potentially adversely affects a complainant, whether directly or indirectly. Here, though, the Complainant has not shown how or why subparagraph c) applies. The Respondent is not a competitor of the Complainant. It has simply populated the Disputed Domain Name by hyperlinks to goods and services in the industry the Complainant serves. The logical inference drawn from this, which I have alluded to above, is that the Respondent was well aware, indeed had actual knowledge, of Complainant.

The Complainant argues that “the Disputed Domain Name resolves to a parked webpage containing pay-per-click links, including “Auto Garage,” “Auto Loans,” “No Money Down Vehicles,” and “Bad Credit no Mon...” – at least some of the links are related to Complainant’s auto sales operations. Previous panels have found bad faith where a domain resolved to a pay-per-click webpage. *Payless ShoeSource Worldwide, Inc. v. Antonia Ojo DCA-1934-CIRA* (BCICAC March 9, 2018) at page 7.” The Panel agrees with the Complainant that the Respondent’s use of the Disputed Domain Name may support bad faith registration.

This argument is directed to violation of subparagraph 4(d) and is persuasive on the issue of bad use as evidence of bad faith registration. The Panel finds that the Respondent opportunistically registered the Disputed Domain Name and was using it to attract Internet users intending to reach the Complainant, and by this monetizing strategy used Disputed Domain Name for the value of the trademark. The Panel has visited <enterpriseautofinance.ca and confirms Complainant allegation that it “resolves to a parked webpage containing pay-per-click links, including “Auto Garage,” “Auto Loans,” “No Money Down Vehicles,” and “Bad Credit no Mon...” – at least some of the links are related to Complainant’s auto sales operations.

The Panel finds that the Respondent is attracting attention to the Disputed Domain Name based on the value of the mark, and by this strategy it is “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.”

When it comes to understanding motive, it would be rare for a respondent to admit any actionable wrong, although in this case the Respondent tacitly admitted to its intentions by demanding payment for the Disputed Domain Name. The Panel also concurs that motive can be pieced together by inference of conduct and use.

For all of the above reasons, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith. Accordingly, the Complainant has satisfied its burden of proof with regard to Paragraph 4.1(c) of the Policy.

5 DECISION and ORDER

For the above reasons, and in accordance with Paragraph 4 of the CDRP and Paragraph 12 of the Resolution Rules, the Panel orders that <enterpriseautofinance.com> be transferred to the Complainant.

Made as of March 22, 2023

SIGNATURE OF PANEL

