

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Complainant: Enterprise Holdings, Inc.

Respondent: Ye Li

Case Number: DHK-1400113

Contested Domain Name: <enterprize.hk>

Panel Member: Adam Samuel

1. Parties and Contested Domain Name

The Complainant is a US corporation in St Louis, Missouri. The Respondent is apparently resident in the People's Republic of China. The contested domain name is <enterprize.hk>.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center") on 5 November 2014. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name in the Complaint.

The Center verified that the Complaint satisfied the formal requirements of the Hong Kong Domain Name Dispute Resolution Policy (the "Policy" or "HKDRP") and the Rules for Hong Kong Domain Name Dispute Resolution Policy (the "Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 27, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was December 18, 2014. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 19, 2014.

The Center appointed Adam Samuel as the sole panelist in this matter on December 29, 2014. 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.

3. Factual Background

For the Complainant

The Complainant owns the ENTERPRISE mark which it licenses Enterprise Rent-A-Car a very well-known brand in the vehicle rental business. The Complainant owns a number of trademark registrations in Hong Kong going back to 2000, 2002B07394 and 2002B13130, both dated 27 July 2000, pre-dating the initial registration of the disputed domain name by more than thirteen years.

For the Respondent

The disputed domain name was registered on 22 April 2014.

4. Parties' Contentions

The Complainant

These are the Complainant's submissions with which the Panel does not necessarily agree.

The disputed domain name incorporates the Complainant's mark, merely changing the "S" to a "Z" creating a common misspelling of the Complainant's mark that also sounds identical to the Complainant's ENTERPRISE mark when said aloud. The changing of one letter, especially as here when the word created maintains a phonetic similarity to the original word, is not sufficient to distinguish the disputed domain name from the Complainant's mark. This practice is known as typosquatting and indicates that the Respondent is well aware of the confusing similarity between the Complainant's trademark and the disputed domain name. This is bolstered by the presence of a link to the Complainant's website on the disputed domain name's website.

The Respondent has no legitimate rights to the name ENTERPRIZE. His web page merely drives Internet traffic to other websites offering car rental services, including those of the Complainant and its competitors and contains a generalized offer to sell the disputed domain name. Nothing in the WHOIS record or the web page at the disputed domain name indicates that the Respondent is known as, operates a business as, or advertises itself as "enterprize" .

The fact that the Respondent has a link to the Complainant's website under its "sponsored listings" makes it all the more likely that visitors to the disputed domain name will be confused as to the ownership of the domain. The web-page to which the disputed domain name resolves is a "pay-per-click" web page. It contains online advertising from which someone, presumably the Respondent, will earn "click-through" fees. The Respondent's web page contains a box at the bottom right stating "BUY THIS DOMAIN" provides additional evidence of bad faith use of the disputed domain name under the policy. The owner of a domain name is deemed to be responsible for content appearing on its website even if it has no real control over this.

The Respondent

The Respondent did not provide any response to the Complaint.

5. Findings

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith; and
- (iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

(1). Identical/confusing similarity

The disputed domain name differs from the Complainant's Hong Kong trademark only by the insertion of the letter "z" for the letter "s" and the necessary addition of ".hk". Phonetically "enterprize" and the Complainant's trademark sound identical.

For these reasons and in the absence of a response, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's Hong Kong trademark rights.

(2). Rights or Legitimate Interests of Respondent

The Respondent is not called "Enterprize" or anything similar and does not appear to engage in a legitimate trade under that or any related name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademarks. For these reasons, and in the absence of any response on this point, notably one contradicting the Complainant's claim that the Respondent has never been connected to it in any way, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3). Bad faith

This is very finely balanced. This is not a typo-squatting case. The word "enterprise" is a very common term, particularly in Hong Kong and one for which prizes could easily be awarded. It would not have been difficult for the Respondent to have made submissions on why he registered the domain name that relate to this possible double meaning. These would in all probability have made it impossible for the Complainant to prove bad faith registration. The registration of a similar sounding but distinctively different word from the Complainant's trademark would not be an infringement of the mark. This is the problem for the Complainant in having a very indistinct trademark using a very common word without embellishment.

Nevertheless, the Panel has to consider the evidence as it actually is without any explanation from the Respondent. The parking page to which the disputed domain resolves provides links to various car-hire businesses including the Complainant's licensee. It also says that the disputed domain name is for sale although for how much is not indicated. It is entirely plausible that the parking page was put up by the registrar with no input from the Complainant. The Panel would reject the notion that a domain name owner is required to monitor every domain it owns to ensure that such parking pages do not appear. For many businessmen in the legitimate business of buying and selling domain names, this would not be practical.

The speed, though, with which the website to which the disputed domain name resolves posted an indication that it was for sale (a matter of months) suggests that in the words of paragraph 4(b)(i) of the Policy that:

“the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration 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 Registrant's documented out-of-pocket costs directly related to the Domain Name.”

There is no evidence of the price but it is implausible that this would be no more than the Respondent's out-of-pocket expenses. That is good enough to provide evidence of bad faith registration and use.

The Respondent could have replied that he was keen to sell his new domain name to anyone interested in the notion of a prize for showing enterprise or just someone who wanted to reflect the general idea of “enterprise” in a domain name. However, he has not done so,

For this reason, and only in the absence of a response, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

(4). If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name

The Registrant is not called “Enterprize”. So, the Registrant does not meet the registration requirements for that individual category of domain name

6. Conclusions

On balance, the Panel upholds the Complaint. The Panel orders transfer of the disputed domain name to the Complainant. If, for whatever reason, this cannot be done, the Panel orders cancellation of the disputed domain name. It is to be hoped that if cancellation has to be implemented, the Complainant will be informed immediately when this is done so that it

