



## NATIONAL ARBITRATION FORUM

### DECISION

Enterprise Rent-A-Car Company v. Paul Disley d/b/a Im Flying  
Claim Number: FA0606000736453

#### PARTIES

Complainant is **Enterprise Rent-A-Car Company** ("Complainant"), represented by **Vicki L. Little**, of **Schultz & Little, L.L.P.**, 640 Cepi Drive, Suite A, Chesterfield, MO 63005-1221. Respondent is **Paul Disley d/b/a Im Flying** ("Respondent"), 14 Penny Lane, Liverpool L18 6TH, UK.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**car-enterprise-rental.info**>, registered with **RegisterFly.com, inc.**

#### PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on June 20, 2006; the National Arbitration Forum received a hard copy of the Complaint on June 23, 2006.

On June 29, 2006, RegisterFly.com, inc. confirmed by e-mail to the National Arbitration Forum that the <**car-enterprise-rental.info**> domain name is registered with RegisterFly.com, inc. and that Respondent is the current registrant of the name. RegisterFly.com, inc. has verified that Respondent is bound by the RegisterFly.com, inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On June 30, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of July 20, 2006 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@car-enterprise-rental.info by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On July 26, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

#### **RELIEF SOUGHT**

Complainant requests that the domain name be transferred from Respondent to Complainant.

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

Complainant owns all right, title and interest in, to and under the following registrations and marks, among others, including, but not limited to, all goodwill associated therewith:

| <b>MARK</b>  | <b>REG. NO.</b> | <b>REG. DATE</b> | <b>SERVICES</b>   |
|--------------|-----------------|------------------|---|
| Enterprise   | 1,343,167       | June 18, 1985    | Automotive fleet management services; automotive repair services; short-term rental and leasing of automobiles and trucks; automotive dealership services |
| E Enterprise | 2,052,192       | April 15, 1997   | Vehicle rental and leasing services;  |

|                               |           |                    |   |
|-------------------------------|-----------|--------------------|---|
|                               |           |                    | automobile dealership services  |
| Enterprise Rent-A-Car         | 2,371,192 | July 25, 2000      | Vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles                    |
| E Enterprise rent-a-car       | 2,010,244 | October 22, 1996   | Vehicle rental and leasing services   |
| E Enterprise rent-a-car       | 2,010,245 | October 22, 1996   | Vehicle rental and leasing services   |
| E Enterprise rent-a-car truck | 2,532,725 | January 22, 2002   | Vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles                    |
| E Enterprise car sales        | 2,052,193 | April 15, 1997     | Automobile dealership services  |
| E Enterprise 1800 car sales   | 2,192,909 | September 29, 1998 | Automobile dealership services  |
| E Enterprise 1800 car sales   | 2,152,554 | April 21, 1998     | Automobile dealership services  |
| E Enterprise                  | 2,190,147 | September 22, 1998 | Automobile fleet management services; automobile repair services; short-term rental services of automobiles and trucks; |

|                             |           |                  |   |
|-----------------------------|-----------|------------------|---|
|                             |           |                  | automobile leasing services; automobile dealership services |
| E Enterprise fleet services | 2,010,290 | October 22, 1996 | Automobile repair services; automobile dealership services  |

Complainant also has the following trademark registrations, among others, in the European Union and in the United Kingdom, where Respondent is located:

| <b>MARK</b>  | <b>JURISDICTION</b> | <b>REG. NO.</b> | <b>FILING DATE</b> |
|--|---------------------|-----------------|--------------------|
| Enterprise   | European Union      | 36384           | April 1, 1996      |
| e Enterprise   | European Union      | 36541           | April 1, 1996      |
| e Enterprise   | European Union      | 36574           | April 1, 1996      |
| ENTERPRISE   | United Kingdom      | 1541740         | July 14, 1993      |
| “E” & design   | United Kingdom      | 1544987         | August 14, 1993    |
| “E” & design   | United Kingdom      | 1545521         | August 19, 1993    |
| e Enterprise   | United Kingdom      | 2033136         | September 9, 1995  |
| e Enterprise rent-a-car  | United Kingdom      | 2033436         | September 13, 1995 |
| e Enterprise rent-a-car  | United Kingdom      | 2035279         | September 19, 1995 |
| 800 ENTERPRISE, 800 Enterprise, 800-ENTERPRISE, 800-Enterprise | United Kingdom      | 2223301         | February 23, 2000  |
| ENTERPRISE   | United              | 2369976         | August 5,          |

|          |         |  |      |
|----------|---------|--|------|
| CAR HIRE | Kingdom |  | 2004 |
|----------|---------|--|------|

These trademarks, together with those listed above, are hereinafter collectively referred to as the “Enterprise Marks” or “Marks.”

In addition, Complainant properly registered the domain name <enterpriserentacar.com> on August 20, 1996, and the domain name <enterprise.com> on June 1, 1998, both of which are currently registered through markmonitor.com.

### **FACTUAL AND LEGAL GROUNDS**

This Complaint is based upon, *inter alia*, the following facts and legal grounds (ICANN Rule (b)(ix)):

**A. Respondent’s Domain Name Is Confusingly Similar to Complainant’s Marks.**

(ICANN Rule 3(b)(ix)(1); ICANN Policy ¶4(a)(ii).)

Complainant, Enterprise Rent-A-Car Company, has registered its Marks in connection with vehicle rental, leasing and sales services, and those Marks have been used since 1985. Complainant has spent much time and many resources promoting its business under the Enterprise Marks, and has developed substantial goodwill in connection with that business and the associated Marks. The Enterprise Marks are famous and distinctive, and the public has come to associate them closely with Complainant and its business. Complainant has also registered and used its domain names <enterpriserentacar.com> and <enterprise.com> in order further to promote its business and goodwill. Complainant thus has established rights in the Enterprise Marks. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (NAF Feb. 18, 2004) (registration of mark with USPTO establishes complainant’s rights in the mark); *Men’s Wearhouse, Inc. v. Wick*, FA 117861 (NAF Sept. 16, 2002) (“Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired a secondary meaning.”); *Janus Int’l Holding Co. v. Rademacher*, D2002-0201 (WIPO March 5, 2002) (registration of a mark is *prima facie* evidence of validity, and that creates a rebuttable presumption that the mark is inherently distinctive).

Respondent’s domain name <car-enterprize-rental.info> is confusingly similar to Complainant’s registered and common law Enterprise Marks listed above, and to Complainant’s domain names <enterpriserentacar.com> and <enterprise.com>. Respondent’s domain name incorporates both a common misspelling of Complainant’s famous Mark and a specific reference to Complainant’s car rental business. These facts establish confusing similarity. *See Enterprise Rent-A-Car Company v. Titan Net a/k/a Titan*, FA 692660 (NAF June 14, 2006) (common, single-letter misspelling, replacing letter “s” with the letter “z,” fails to distinguish domain name from Complainant’s mark); *Enterprise Rent-A-Car Company v. Drivitaway.com a/k/a Stacy Ratner*, FA 192578 (NAF Oct. 22, 2003) (domain name <enterprisecarauctions.com> found to be confusingly similar to Complainant’s name and marks); *Enterprise Rent-A-Car Company v. Dotsan*, FA 114349 (NAF July 9, 2002) (confusing similarity found where disputed domain

name included both Complainant's trademarked name and reference to Complainant's business); *Compaq Info. Techs. Group, L.P. v. Seocho*, FA 103879 (NAF Feb. 25, 2002) (finding that the domain name <compq.com> is confusingly similar to COMPAQ mark because omission of the letter "a" does not significantly change the overall impression of the mark); *Brown & Bigelow, Inc. v. Rodela*, FA 96466 (NAF March 5, 2001) (finding confusing similarity where domain name used complainant's business name and a reference to the type of business conducted); *Ohio Lottery Comm'n v. John Barbera*, FA 96571 (NAF March 1, 2001) (domain name that included mark and reference to Complainant's business was confusingly similar); *Space Imaging, LLC v. Brownwell*, AF-0298 (eRes Sept. 22, 2000) (finding confusing similarity where domain name included reference to complainant's business); *State Farm Mut. Auto Ins. Co. v. Try Harder & Co.*, FA 94730 (NAF June 15, 2000) ("statfarm.com" confusingly similar to complainant's name); *Am. Online, Inc. v. Avrasya Yayincilik Ltd.*, FA 93679 (NAF March 16, 2000) ("americanonline.com" confusingly similar to complainant's famous mark); *Fossil, Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000) (finding confusing similarity where domain name included complainant's mark and reference to complainant's business).

In this case, the confusion caused by Respondent's use of a domain name that incorporates a misspelling of Complainant's famous name, plus a rental-car reference, is compounded by the fact that Respondent's web-site provides direct links to other car rental web-sites, and by the fact that Respondent has used the word "Enterprise" in the text of that web-site. Because of the confusing similarity between Complainant's own Marks and the disputed domain name, there is a substantial risk that members of the public will associate the disputed domain name and the associated web-site and links with Complainant's business and will incorrectly identify Complainant as the source of the information provided. Complainant is not associated in any way with Respondent or his web-site. Cf. *Fossil, Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000); *Ohio Lottery Commission v. John Barbera*, FA 96571 (NAF March 1, 2001); *Caterpillar Inc. v. Roam the Planet*, D2000-0275 (WIPO March 25, 2000).

**B. Respondent Has No Legitimate Rights or Interests in Complainant's Marks or in the Disputed Domain Name.**

(ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii).)

Respondent has no legitimate rights or interests in either the Enterprise Marks or the disputed domain name.

1. Respondent is not associated in any way with Complainant and has never been authorized or licensed to use Complainant's valuable, famous and distinctive Enterprise Marks.
2. On information and belief, aside from Respondent's illegal registration and use of the <car-enterprize-rental.info> domain name, Respondent does not do business as "Enterprise."
3. Respondent is not making a legitimate non-commercial use of the domain name.
4. The disputed domain name was registered on May 26, 2006, twenty-one (21) years after Complainant's first registration of an Enterprise Mark, ten (10) years after

Complainant registered the domain name <enterpriserentacar.com>, and eight (8) years after Complainant registered the domain name <enterprise.com>.

Based on these facts, Respondent has no legitimate rights or interests in the disputed domain name. *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO March 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); *Charles Jourdan Holding AG v. AAIM*, D 2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where: (1) the respondent was not licensed by the complainant; (2) the complainant's prior rights to the domain names preceded the respondent's registration; and (3) the respondent was not commonly known by the name in question).

**C. Respondent Has Registered and Used the Disputed Domain Name in Bad Faith.**  
(ICANN Rule 3(b)(ix)(3); ICANN Policy ¶4(a)(iii).)

Respondent has registered and used the disputed domain name, <car-enterprize-rental.info>, in bad faith. It is clear from the domain name itself, its confusing similarity to Complainant's famous Marks, and Respondent's use of it in connection with links to car rental services, that Respondent was aware of Complainant's famous Marks and of Complainant's business before registering the domain name. These facts by themselves demonstrate Respondent's bad faith. *See Enterprise Rent-A-Car Company v. Moe Malakouti*, FA 125370 (NAF Dec. 2, 2002) (registration of an infringing domain name when the respondent has actual or constructive notice of complainant's mark evidences bad faith); *Reed Elsevier, Inc. & Reed Elsevier Properties, Inc. v. Andrew Christodoulou*, FA 97321 (NAF June 26, 2001) (the obvious fame of complainant's mark evidences Respondent's bad faith); *Hannover Ruckversicherungsgesellschaft*, FA 102724 (NAF Jan. 7, 2001) (respondent's intentional selection of a domain name that wholly incorporated complainant's famous mark evidences bad faith).

The fact that Respondent's web-site is directly linked to other car rental sites is especially damaging. Due to the confusing similarity between the disputed domain name and Complainant's famous Marks, internet users seeking information regarding Complainant and its business are likely inadvertently to reach Respondent's web-site, and then either incorrectly identify Complainant as the source or sponsor of that web-site or be misdirected to a competing rental car business. Respondent obviously intended to gain advantage from this confusion in registering the domain name in the first place. Respondent's actions are damaging to Complainant and dilutive of its Marks, and they constitute bad faith. *See ICANN Policy ¶4(b)(iv)* (bad faith evidenced by registrant's use of domain name intentionally to attract internet users to web-site by creating a likelihood of confusion with complainant's mark as source of or affiliation with web-site); *Enterprise Rent-A-Car v. LaPorte Holdings, Inc.*, FA 417764 (NAF March 28, 2005) (panel found that this Respondent was intentionally creating a likelihood of confusion with Complainant's marks with respect to a different domain name in order to attract internet users to Respondent's site for its own commercial gain); *Enterprise Rent-A-Car Company v. Dotsan*, FA 114349 (NAF July 9, 2002) (bad faith demonstrated by respondent's use of confusingly similar name to attract consumers to a site that offers competing services); *Busy*

*Body, Inc. v. Fitness Outlet, Inc.*, D2000-0127 (WIPO April 22, 2000) (bad faith shown by respondent's attempt to use famous name to attract customers to same line of business); *Fossil Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000) (finding that the respondent acted in bad faith by registering the <fossilwarch.com> domain name and using it to sell watches when the respondent had not been authorized by the complainant to sell its goods).

Respondent's bad faith is also evidenced by Respondent's pattern of conduct with regard to registering domain name for the purpose of confusing internet users and misdirecting them to Respondent's own web-sites. In addition to the domain name at issue here, Respondent has registered several other domain names that incorporate the famous names of other entities. These famous-name domain names include, among others: <hoover-steam-vac.info>; <ept-pregnancy-test.info>; <canon-sd450.info>; <burke-dooney-purse.info>; <hallmark-free-ecard.info>; <briggs-stratton-engine-part.info>; <scotts-weed-and-feed.info>; <calvin-klein-swim-wear.info>; <calaphon-cookware.info>; <nikon-f100-price.info>; <kmart-patio-furniture.info>; <dolce-gabana-perfume.info>; <toyota-camry-floor-mat.info>; <disneys-animal-kingdom.info>; <jenn-air-gas-grill.info>; <weight-watcher-point-calculator.info>; <sunbeam-electric-blanket.info>; <disneys-vero-beach-resort.info>; <corelle-dish.info>; <tommy-hilfiger-comforter.info>; <opi-nail-polish.info>; <bissell-steam-mop.info>; <nike-air-force-1s.info>. This type of pattern evidences bad faith. See *Compaq Information Technologies Group, L.P. v. Seocho*, FA 103879 (NAF Feb. 25, 2002); *Toyota Motor Sales v. Rafi Hamid d/b/a ABC Automobile Buyer*, D2001-0032 (WIPO March 28, 2001).

Finally, given the nature of the domain name, which incorporates both a minor misspelling of Complainant's famous name and a specific reference to the car rental business, it is difficult to imagine a legitimate use to which Respondent could put the domain name. In these circumstances, the mere holding of a confusingly similar domain name constitutes bad faith. See *Nat'l Gold Buyers Ass'n, Inc. v. Pro Star Ltd. Partnership*, FA 97292 (NAF June 27, 2001) (respondent's holding of domain name demonstrates bad faith); *Reed Elsevier, Inc. & Reed Elsevier Properties, Inc. v. Andrew Christodoulou*, FA 97321 (NAF June 26, 2001) (respondent's holding, plus the obvious fame of complainant's mark, evidence bad faith); *Glimcher Holdings Ltd. Partnership v. NetPlus Communications, Inc.*, FA 97041 (NAF May 14, 2001) (bad faith demonstrated by fact that respondent could not have used domain name without infringing on complainant's rights).

B. Respondent failed to submit a Response in this proceeding.

## **FINDINGS**

Complainant, Enterprise Rent-A-Car Company, has multiple registrations with the United States Patent and Trademark Office ("USPTO") for its ENTERPRISE mark (Reg. No. 1,343,167 issued June 18, 1985) and ENTERPRISE RENT-A-CAR mark (Reg. No. 2,371,192 issued July 25, 2000). Since 1985 Complainant has used its marks in connection with vehicle rental, leasing and sales services. Complainant has promoted its business under its registered marks developing substantial goodwill in connection with the business, and causing the public to associate these marks with Complainant. Complainant has used its mark in two registered domain names,

<enterpriserentalcars.com> and <enterprise.com>, used to connect Internet users to Complainant's website which offers information about Complainant's goods and services as well as the ability to make rental reservations online.

Respondent registered the <car-enterprize-rental.info> domain name on May 26, 2006. Respondent's domain name resolves to a website composed primarily of links to third-party websites. While some of these links are unrelated to Complainant's business, for example, "WSOP Fantasy Poker Game," "Fantasy Sports," and "Uffclive.com," the majority of links are for websites of businesses in direct competition with Complainant, for example, "Thrifty Rental Car," "Dollar Rent a Car," and "All the Car Rentals."

## **DISCUSSION**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **Identical and/or Confusingly Similar**

Complainant has established rights in its ENTERPRISE and ENTERPRISE RENT-A-CAR marks through registration with the USPTO, England and the European Union. The Panel finds these registrations are sufficient to establish rights in the marks pursuant to Policy ¶4(a)(i). *See Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive."); *see also Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum

Nov. 11, 2003) (“Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark.”).

Respondent’s <**car-enterprize-rental.info**> domain name is confusingly similar to Complainant’s ENTERPRISE and ENTERPRISE RENT-A-CAR marks. Respondent’s domain name includes the term “enterprize,” which is a common misspelling of Complainant’s ENTERPRISE mark easily created through accidental typographical error of substituting the letter “z” for the letter “s”. The additional terms “car” and “rental” are both elements from Complainant’s ENTERPRISE RENT-A-CAR mark, as well as terms that specifically describe Complainant’s business. Utilizing a common misspelling of Complainant’s mark in conjunction with terms descriptive of Complainant’s business does not overcome the confusing similarity between the disputed domain name and Complainant’s mark. Respondent’s inclusion of hyphens between the terms in the domain name does nothing to overcome the confusing similarity between the disputed domain name and Complainant’s mark. The Panel finds Respondent’s <**car-enterprize-rental.info**> is confusingly similar to Complainant’s ENTERPRISE and ENTERPRISE RENT-A-CAR marks pursuant to Policy ¶4(a)(i). *See Dow Jones & Co., Inc. v. Powerclick, Inc.*, D2000-1259 (WIPO Dec. 1, 2000) (holding that the deliberate introduction of errors or changes, such as the addition of a fourth “w” or the omission of periods or other such “generic” typos do not change respondent’s infringement on a core trademark held by the complainant); *see also Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where the respondent’s domain name combines the complainant’s mark with a generic term that has an obvious relationship to the complainant’s business); *see also Chernow Commc’ns, Inc. v. Kimball*, D2000-0119 (WIPO May 18, 2000) (holding “that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark.”).

The Panel finds Policy ¶4(a)(i) satisfied.

### **Rights or Legitimate Interests**

Complainant submission and assertion that Respondent lacks rights or legitimate interests in the <**car-enterprize-rental.info**> domain name constitutes a *prima facie* case. The existence of a *prima facie* case shifts the burden to Respondent to present evidence or arguments to demonstrate that it does have rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). In evaluating the available evidence, the Panel may view Respondent’s failure to Respondent as evidence Respondent lacks rights or legitimate interests in the disputed domain name. In the absence of a Response from Respondent, the Panel will evaluate the available evidence to determine whether or not Respondent has rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c). *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (“Because Complainant’s Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent’s failure to respond means Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”); *see also Am.*

*Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“Given Respondent’s failure to submit a substantive answer in a timely fashion, the Panel accepts as true all of the allegations of the complaint.”).

Respondent is using the disputed domain name to redirect Internet users to Respondent’s website, which is populated with links to third-party websites, some of which are unrelated to Complainant’s business, while the majority are for businesses offering goods and services in direct competition with Complainant. Presumably, Respondent is receiving pay-per-click referral fees from these links. As Respondent’s website is apparently a parking page for links to third-party websites, and is not offering any goods or services for sale directly through the website, the Panel finds Respondent’s use of the disputed domain name does not constitute a *bona fide* offering of goods or services as contemplated by Policy ¶4(c)(i). The Panel finds Respondent is not using the disputed domain name in a legitimate noncommercial or fair way as contemplated by Policy ¶4(c)(iii) because Respondent presumably receives pay-per-click referral fees from hosting of these links. *See 24 Hour Fitness USA, Inc. v. 24HourNames.com-Quality Domains For Sale*, FA 187429 (Nat. Arb. Forum Sep. 26, 2003) (holding that Respondent’s use of the <24hrsfitness.com>, <24-hourfitness.com> and <24hoursfitness.com> domain names to redirect Internet users to a website featuring advertisements and links to Complainant’s competitors could not be considered a *bona fide* offering of goods or services or a legitimate noncommercial or fair use); *see also WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003) (finding that the respondent’s use of the disputed domain name to redirect Internet users to websites unrelated to the complainant’s mark, websites where the respondent presumably receives a referral fee for each misdirected Internet user, was not a *bona fide* offering of goods or services as contemplated by the Policy).

Complainant asserts, without contradiction, Respondent is not commonly known by the <car-enterprize-rental.info> domain name. Respondent’s WHOIS information identifies Respondent as “Paul Disley,” a name in no clear way connected to the disputed domain name. Complainant also asserts Respondent is not sponsored by or affiliated with Complainant in any way, and does not have authorization from Complainant to use Complainant’s mark. In light of the available evidence, the Panel finds Respondent is not commonly known by the disputed domain name and thus does not have rights or legitimate interests pursuant to Policy ¶(4)(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy ¶4(c)(ii) does not apply); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

The Panel finds Policy ¶4(a)(ii) satisfied.

### **Registration and Use in Bad Faith**

Respondent is using the <car-enterprise-rental.info> domain name to redirect Internet users to Respondent's website featuring links to third-party websites, many offering car rental services in direct competition with Complainant. Respondent's use of a confusingly similar domain name to redirect Internet users to Respondent's website featuring links to third-party websites in direct competition with Complainant is particularly disruptive to Complainant's business because Complainant's genuine website allows Internet users to make reservations to use Complainant's car rental services while online. If Internet users are seeking Complainant's website and instead find themselves redirected to Respondent's website, they might follow one of the competing third-party links and make their online reservations with one of Complainant's direct competitors, instead of with Complainant. The Panel finds Respondent's use of the <car-enterprise-rental.info> to redirect Internet users to Respondent's website featuring competing third-party links disrupts Complainant's business and is evidence of bad faith registration and use as contemplated by Policy ¶4(b)(iii). See *EthnicGrocer.com, Inc. v. Latingrocer.com*, FA 94384 (Nat. Arb. Forum July 7, 2000) (finding bad faith where the respondent's sites pass users through to the respondent's competing business); see also *Puckett, Individually v. Miller*, D2000-0297 (WIPO June 12, 2000) (finding that the respondent has diverted business from the complainant to a competitor's website in violation of Policy ¶4(b)(iii)).

Respondent's <car-enterprise-rental.info> domain name is confusingly similar to Complainant's ENTERPRISE and ENTERPRISE RENT-A-CAR marks. Internet users interested in learning more about Complainant's business, or potentially making a car rental reservation with Complainant online could easily be redirected to Respondent's website. Such an Internet user may accidentally mistype Complainant's mark, or might include the terms "car" and/or "rental" with Complainant's mark in an Internet search thus finding themselves at Respondent's website instead of at Complainant's genuine website. Because the disputed domain name is confusingly similar to Complainant's marks, an Internet user redirected to Respondent's website may be confused as to the sponsorship of or affiliation with Respondent's website, mistakenly believing that Complainant has endorsed Respondent's website. Respondent is taking advantage of this confusion by featuring on its website links to third-party websites, from which Respondent presumably receives pay-per-click referral fees. The Panel finds Respondent's use of a confusingly similar domain name to attract Internet users to Respondent's website, for Respondent's financial gain, is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). See *TM Acquisition Corp. v. Warren*, FA 204147 (Nat. Arb. Forum Dec. 8, 2003) ("Although Complainant's principal website is <century21.com>, many Internet users are likely to use search engines to find Complainant's website, only to be misled to Respondent's website at the <century21realty.biz> domain name, which features links for competing real estate websites. It is likely Internet users seeking Complainant's website, but who end up at

Respondent's website, will be confused as to the source, sponsorship, affiliation or endorsement of Respondent's website."); *see also Associated Newspapers Ltd. v. Domain Manager*, FA 201976 (Nat. Arb. Forum Nov. 19, 2003) ("Respondent's prior use of the <mailonsunday.com> domain name is evidence of bad faith pursuant to Policy ¶4(b)(iv) because the domain name provided links to Complainant's competitors and Respondent presumably commercially benefited from the misleading domain name by receiving 'click-through-fees.'").

The Panel finds Policy ¶4(a)(iii) satisfied.

### **DECISION**

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <car-enterprize-rental.info> domain name be **TRANSFERRED** from Respondent to Complainant.

  
Houston Putnam Lowry, Esq.  
Arbitrator