



NATIONAL ARBITRATION FORUM

DECISION

Enterprise Rent-A-Car Company v. Private WHOIS c/o Privacy Protection
Claim Number: FA0612000874260

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 **Private WHOIS c/o Privacy Protection** (“Respondent”), Mumbai, Mumbai, Maharashtra 0000000, IN.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**enterprize.com**>, registered with **Lead Networks Domains Pvt. Ltd.**

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 December 20, 2006; the National Arbitration Forum received a hard copy of the Complaint on December 27, 2006.

On January 4, 2007, Publicdomainregistry.com on behalf of Lead Networks Domains Pvt. Ltd. confirmed by e-mail to the National Arbitration Forum that the <**enterprize.com**> domain name is registered with Publicdomainregistry.com on behalf of Lead Networks Domains Pvt. Ltd. and that the Respondent is the current registrant of the name. Publicdomainregistry.com on behalf of Lead Networks Domains Pvt. Ltd. has verified that Respondent is bound by the Publicdomainregistry.com on behalf of Lead Networks Domains Pvt. Ltd. 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 January 11, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of January 31, 2007 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@enterprize.com by e-mail.

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

On February 7, 2007, 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.

On February 14, 2007, Lead Networks Domains Pvt. Ltd. independently confirmed that the <enterprize.com> domain name was registered with Lead Networks Domains Pvt. Ltd. and was locked.

A Response was received on February 16, 2007. The Response was received late and thus deficient under ICANN Rule 5(a).

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.

A timely Additional Submission was received from Complainant on February 20, 2007.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

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:

MARK	REG. NO.	REG. DATE	SERVICES
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 1 800 car sales	2,192,909	September 29, 1998	Automobile dealership services
E Enterprise 1 800 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

These marks 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 has thus established rights in the Enterprise Marks. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (registration of mark with USPTO establishes complainant's rights in the mark); *see also Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired a secondary meaning."); *see also 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 <enterprize.com> 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>. In fact, Respondent's domain name is virtually identical to Complainant's famous name and to Complainant's own domain name <enterprise.com> - Respondent has merely changed the letter "s" to a "z." The changing of a single letter is insufficient to create a distinct domain name under the Policy. Indeed, a panel recently found that the domain name <enterprise4.com> was confusingly similar to Complainant's Marks and ordered that it be transferred to Complainant. *Enterprise Rent-A-Car Company v. Smith*, FA 660686 (Nat. Arb. Forum May 3, 2006). *See also Amazon.com v. Dinoia*, FA 536549 (Nat. Arb. Forum Sept. 26, 2005) (neither addition of letters "www" to nor misspelling of complainant's marks do not create distinct domain names); *Compaq Info. Techs. Group, L.P. v. Seocho*, FA 103879 (Nat. Arb. Forum 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); *Collections Etc., Inc. v. Cupcake Patrol*, D2001-0305 (WIPO May 10, 2001) ("Merely deleting a letter from one of the words in a Complainant's mark does not avoid the clear link between a domain name and the mark."); *Toronto-Dominion Bank v. Karpachev*, D2000-1571 (WIPO Jan. 15, 2001) (finding that the domain names <tdwatergouse.com> and <dwaterhouse.com> are virtually identical to complainant's TD WATERHOUSE name and mark); *Martin v.*

MDD, Inc., AF-0310 (eRes Oct. 4, 2000) (finding that the domain name <blueridgeknife.com> is identical to complainant's registered marks BLUE RIDGE KNIVES); *State Farm Mut. Auto Ins. Co. v. Try Harder & Co.*, FA 94730 (Nat. Arb. Forum June 15, 2000) (finding <statfarm.com> confusingly similar to complainant's name); *Hewlett-Packard Co. v. Zuccarini*, FA 94454 (Nat. Arb. Forum May 30, 2000) (finding the domain name <hewlitpackard.com> to be identical or confusingly similar to complainant's HEWLETT-PACKARD mark); *Am. Online, Inc. v. Avrasya Yayincilik Ltd.*, FA 93679 (Nat. Arb. Forum March 16, 2000) (finding <americanonline.com> confusingly similar to complainant's famous mark).

Using a domain name that is a misspelling of a famous mark creates great potential for confusion on the Internet. As other panels have recognized, Internet users often make typing errors and mistakenly end up at different sites than they intended. *See, e.g., News Group Newspapers Ltd. v. Momm Amed la*, D2000-1623 (WIPO Jan. 18, 2001) (recognizing the dangers of "typosquatting"). In this case, the confusion caused by Respondent's use of a domain name that completely incorporates Complainant's famous name, with a single, insignificant change, is compounded by the fact that Respondent's website provides direct links to other sites that offer car rental services, like Complainant's. 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 website with Complainant's business and will incorrectly identify Complainant as the source of the information provided. Complainant, in fact, is not associated in any way with Respondent or Respondent's website. *See Fossil, Inc. v. NAS*, FA 92525 (Nat. Arb. Forum Feb. 23, 2000); *Ohio Lottery Commission v. Barbera*, FA 96571 (Nat. Arb. Forum 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 improper registration and use of the <enterprize.com> domain name, Respondent does not do business as "Enterprise."
3. Respondent is not making a legitimate non-commercial use of the domain name.
4. Complainant originally filed this Complaint on December 20, 2006. The domain name was then immediately transferred to this Respondent, before the registrar

lock could take effect. Respondent's registration of the domain name thus post-dates Complainant's first registration of an Enterprise Mark by more than twenty-one (21) years. It also follows Complainant's registration of the domain name <enterpriserentacar.com> by more than ten (10) years, and Complainant's registration of 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, <enterprise.com>, 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. Malakouti*, FA 125370 (Nat. Arb. Forum 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. Christodoulou*, FA 97321 (Nat. Arb. Forum June 26, 2001) (the obvious fame of complainant's mark evidences Respondent's bad faith); *Hannover Ruckversicherungsgesellschaft v. Ryu*, FA 102724 (Nat. Arb. Forum 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 website 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 website, and then either incorrectly identify Complainant as the source or sponsor of that website 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 website);

Enterprise Rent-A-Car v. LaPorte Holdings, Inc., FA 417764 (Nat. Arb. Forum March 28, 2005) (panel found that the respondent was intentionally creating a likelihood of confusion with the complainant's marks with respect to a different domain name in order to attract Internet users to the respondent's site for its own commercial gain); *Enterprise Rent-A-Car Company v. Dotsan*, FA 114349 (Nat. Arb. Forum 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 (Nat. Arb. Forum Feb. 23, 2000) (finding that the respondent acted in bad faith by registering the <fossilwatch.com> domain name and using it to sell watches when the respondent had not been authorized by the complainant to sell its goods).

B. Respondent

I, VANITA SEHGAL, of Mumbai, Indian Inhabitant, the Partner of the Respondent abovenamed, residing at 4/607, Kamdhenu Shopping Centre Lokhandwala Complex, Andheri (West), Mumbai - 400 053, do hereby on solemn affirmation state as under: -

1. I am aware of the facts of the case and able to depose to the same.
2. I have read a copy of the Complaint dated January 10, 2007 ("the Complaint"), filed by the Complainant and in reply thereto, I have to state as under.
3. At the outset, I respectfully submit that the Complaint, for the reasons as stated hereinafter, is misconceived and not maintainable and the same is liable to be and should be dismissed with compensatory costs.
4. Without prejudice to what is stated hereinabove and at the further outset, I further respectfully submit that for the reasons as more particularly stated hereinafter, the Complaint suffers from gross delay and laches and therefore on this ground alone the same is liable to be and should be dismissed with costs.
5. Without prejudice to what is stated hereinabove and at the further outset, I respectfully submit and as more particularly stated hereinafter, the Complainant has purposely, intentionally and deliberately suppressed the material and important facts of the case and thereby sought to mislead/misguide this Hon'ble Forum and therefore no reliefs, muchless equitable, be granted to the Complainant and on this ground alone the aforesaid Complaint is liable and should be dismissed with costs.
6. Without prejudice to what is stated hereinabove and at the further outset, I further respectfully submit that the Complainant has filed the Complaint so that the Respondent succumb to the illegal and unreasonable demands of the Complainant and therefore the Complainant has not approached this Hon'ble Forum with clean hands and therefore no

reliefs, muchless, equitable be granted to the Complaint and on this ground alone the same is liable to be and the should be dismissed with costs.

7. Without prejudice to what is stated hereinabove we are further instructed to state that the facts of the case are very narrow in compass and for the sake of convenience the same are abstracted hereunder.

- (a) The Respondent is a partnership firm, having its office situated in Mumbai, India, at the address mentioned in the cause title above. The Respondent is carrying on its business in the name and style of Enterprize Event Management and are managing different events and parties of its clients in Mumbai, India. The Respondent is a tax paying firm. It files its income tax returns with the Income-tax Authorities in India and is paying the Income tax on its income. The Permanent Account Number (“the PAN”) allotted by the Income-tax Authorities in India to the Respondent is AACFE2374F.
- (b) As far as the Respondent is aware, the first documented use of the word enterprize was in the year 1829, when a ship was named as “Enterprize” (“the word”) by its owner. Subsequently, the word is being commonly used by everybody. The word even also forms part of a domain name of various owners thereof viz. <enterprize.com.au> and <enterprise.be> etc. In view of the above, the word is common word can be and is being used by everybody and nobody, including the Complainant, can claim exclusivity thereto. I submit that the Complainant cannot and has no personal/ exclusive right over the word as alleged and sought to be suggested in the Complaint.
- (c) The word forms part of its firm name. In view of the above, it was absolutely necessary for the Respondent to have a domain name which contain the word for the sake of convenience only and not for the reasons as alleged by the Complainant in the Complaint. Apart from the above, it is also pertinent and material to note the respective business being carried on by the Complainant and the Respondent. Admittedly, both are totally different and distinct. The Complainant, as the name suggests, is carrying on its business of renting a car, while the Respondent is carrying on its business of managing the events of its client.
- (d) Apart from the above, it is pertinent and material to note that the domain name <enterprize.com> (“the Respondent domain”) was registered on 30th September, 1997 and the domain name <enterprise.com> (“the Complainant’s domain”) was registered on 1st June, 1998.
- (e) In view of the above, the user of the Respondent domain is prior in point of time and therefore it is the Respondent who can take objection to the use of the word by the Complainant and not the Complainant. It is absolutely immaterial as to who was using it at the time of registration or subsequent thereto. It is the Respondent’s case that the Complainant has sought to change the letter ‘Z’ with

'S' and thereby sought to grab the domain name of the Respondents and not vice versa as alleged by the Complainant in the Complaint. It is further submitted that it is the Complainant who has registered the Complainant's domain which is deceptively similar to that of the Respondent's domain and not vice versa as alleged by the Complainant in the Complaint. It is false to suggest that the Respondent has invented the domain name having the word by changing the letter 'S' to 'Z', however the truth is other way round. In view of the above, it is absolutely absurd to even suggest that Respondent's domain is deceptively similar to that of the Complainant's domain as alleged. It is further absurd to even allege that the public at large will be misguided/mislead as that of the Complainant's domain as alleged.

- (f) As aforesaid, the Respondent's domain was registered on 30th September, 1997. No purported Complaint of any nature whatsoever was made by the Complainant till the filing of the present Complaint, which was filed on or about January 10, 2007 i.e. after the expiry of period of over 9 years from the date of its registration.
- (g) The Registrar to the said Respondent's domain till about December 22, 2006, were Transecute (I) Pvt. Ltd. ("the Transecute"). Subsequently, the same has been changed to Lead Networks Domains Pvt. Ltd. ("the Lead Networks").
- (h) In view of the above, the said Transecute was not at all concerned on the relevant date in respect of the said Respondent's domain and it was the Lead Networks who only were entitled to be approached in respect thereof.
- (i) Subsequent to filing of the Complaint the NAF instead of writing it to the Lead Networks, wrote to the Transecute (under the *bona fide* belief that the said Transecute continues to be the Registrar) to verify the name of the Owner of the Respondent's domain and inform NAF. I submit that when the Transecute received the above direction from this Hon'ble Forum, it was its duty/responsibility to forthwith bring to the notice of this Hon'ble Forum the change of the Registrar and further that they are not concerned at all and should have given the name of the Lead Network. Instead of doing that, one of the group companies of the said Transecute purportedly carried out the verification purportedly on behalf of the Lead Networks. Admittedly, the said Transecute has no right or authority to do anything on behalf of the Lead Networks, let alone the verification of the Respondent's domain. The said Transecute did supplied the name of the Lead Networks, however as we have requested them to keep our name secrete, our name could not be supplied and therefore the out name is not shown in the Complaint and the same is shown as Private WHOIS c/o Privacy Protection.
- (j) On the purported verification by the Transecute, this Hon'ble Forum directed the Complainant to join the present Owners of the domain as also the present Registrar thereof i.e. the Lead Networks.

- (k) It appears that in due compliance of the aforesaid direction, the Complainant amended the Complaint by joining the Respondent as aforesaid and the present Registrar i.e. the Lead Networks.
 - (l) Subsequent to the above and I submit with respect that this Hon'ble Forum should have directed Lead Networks to verify the said Respondent's domain and the owner thereof as was originally directed (though wrongly) to be verified by the Registrar. The same was done only on 13th February, 2007.
 - (m) I submit that the Complainant cannot direct the Lead Network to verify the domain name. It is the work of this Hon'ble Forum to direct the Registrar and this Hon'ble Forum cannot and has in fact not delegated its such powers to the Complainant. Even if the Complainant directs the Lead Networks to verify, then also the Lead Networks are not bound to verify the owner of a domain name.
 - (n) The Respondent did not reply to the Complaint prior to the date hereof, as they were being informed that prior to the verification being done by their Registrar i.e. the Lead Networks and upon the said Registrar giving the requisite details to this Hon'ble Forum, who in turn direct the Complainant to amend the Complaint and join the Respondent and serve a hard copy of Complaint no reply is required to be filed. Admittedly, the Respondent has till date not been served with the hard copy of the proceeding and therefore the question of replying to the same does not arise at all. In view of the above, the Respondent cannot be said to be in default of not replying to the Complaint as alleged. In any event and without prejudice to the above the Respondent does not wish to stick to such technicalities and submits that the delay, if any, in filing the reply be condoned and this reply may be taken on record and considered on its own merit and the Complaint be decided on its own merit.
 - (o) In view of the aforesaid facts the question of sending the papers to the panel for ex-party decision is, with due respect, not correct and the order, if any, passed in that behalf is required to be called back and the matter be proceeded with on its own merits, taking in account this reply of the Respondent, failing which irreparable harm, injury and prejudice will be caused to the Respondent.
8. In the light of the aforesaid facts, I shall now deal with the Complaint pariwise as under.
9. With reference to Para 1 of the Complaint I deny that the Complainant is entitled for the decision as alleged.
10. With reference to Paras 2A & 2B we have noted the contents thereof.
11. With reference to Para 3 of the Complaint the details/particulars given thereunder is not correct and the same are as under

ENTERPRIZE EVENT MANAGEMENT
4/607 Kamdhenu Shopping Centre
Lokhandwala Complex, Andheri (West)
Mumbai – 400 053.
Enterprize.event@gmail.com

12. With reference to Para 4 A of the Complaint I deny that there is any dispute in respect of the Respondent's domain as alleged. From what is stated hereinabove it is very clear that use of their by the there can never be any dispute if the Respondent use their said domain i.e. Respondent's domain. I submit that the Complaint has unnecessarily taken up the issue for the reason not far to seen.

13. With reference to Para 4 B of the Complaint what is stated therein is substantially correct.

14. With reference to Para 4C of the said Complaint I am not aware and do not admit that the Complainant has all the right title and interest in, to and under the registration and marks, amongst others, including but now limited to all goodwill associated with it as mentioned in the Para under reply and put the Complainant to the strict proof thereof. In any event, I submit assume for the purposes of argument without admitting that what is alleged in the para under reply is correct then also it is totally irrelevant for the purposes of deciding the issue in hand. With further reference to the Para under reply by the present Complaint we are concerned with the Respondent's domain and are not at all concerned with the domain name "enterpriserentacar.com." It is pertinent and material to note that the Complaint's domain was registered on 1st June 1998 i.e. much subsequent to the registration of the Respondent's domain.

15. With reference to Para 5A of the said Complaint I deny that Respondent's domain name is similar to the Complainant's domain as alleged and therefore the question of the same is confusingly similar does not arise at all. In any event, I deny that the Respondent's domain is confusingly similar to the Complainant's domain as alleged.

16. With reference to unnumbered Para 1 of Para 5A, I am not aware that the Complainant's marks have been used since 1985 in connection with vehicle rental, leasing sales service as alleged and put the Complainant to the strict proof thereof. I am also not aware that the Complainant has spent time or resource for promoting its business under the said marks as alleged and put the Complainant to strict proof thereof. I am also not aware and do not admit that the Complainant has developed goodwill in connection with its business as alleged and put the Complainant to the strict proof thereof. I am also not aware that the "enterprise marks" are famous or distinctive as alleged and put the Complaint to the strict proof thereof. I deny that the public has come to associate the "enterprise mark" closely with Complainant or its business as alleged. It is pertinent and material to note that except bare purported statements the Complainant has failed and neglected to give any detailed particulars or purported documentary proof/evidence to support/substantiate the same. I therefore submit that no reliance be placed and/or credence be given upon the same and on this ground alone the Complaint be dismissed

with costs. With further reference to Para it is pertinent and material to note that the said Complainant's domain was registered with subsequent to the registration of the Respondent's domain. I deny that for the reasons as alleged or otherwise the Complainant has established rights in enterprise marks as alleged.

17. With reference to unnumbered Para 2 of 5A of the Complaint I deny that the Respondent's domain is similar to the Complainant's domain as alleged and therefore the question of the same is confusingly similar does not arise at all. In any event I deny that the Respondent's domain is confusingly similar to the Complainant's domain as alleged. I deny that the Respondent's domain is identical to Complainant's domain as alleged. I say and as aforesaid, the registration of the Respondent's domain is much prior to the registration of the Complainant's domain and therefore I am absolutely surprised as to how the Complainant can alleged that the Respondent's domain is identical to the Complainant's domain. However it is the Respondents who can allege that the Complainant's domain is virtually identical to the Respondent's domain. I deny that the Respondents have change the letter 's' to 'z' as alleged. However, it is reverse it is the Complainant who has changed the letter 'z' to 's'. It is true that changing of a single letter is insufficient to create a distinct domain name under the policy.

18. With reference to Para 5B of the said Complaint as aforesaid, the word is part of the firm name of the Respondent. The word is a common name and is being used by everybody and the Complainant cannot claim to be exclusively entitled to the same as alleged and sought to be suggested by them. I deny that the Respondent has no legitimate right or interest in its said domain name as alleged. I deny that registration of the Respondent's domain is improper as alleged. The Respondent is not doing business as "Enterprize" as alleged. I deny that the Respondent is not making a legitimate non-commercial use of its domain as alleged. I deny that the domain name was transferred after or in view of the Complaint being filed by the Complainant as alleged. I say that the domain was renewed with the present registrar Lead Networks. The name displayed in the WHOIS is the name as provide by the registrar for the privacy WHOIS protection. Rest of the allegations in the para are denied.

19. I say that Respondent has full right, title and interest to use its said domain and the denial is false to the knowledge of the Complainant. I deny that the Respondent requires permission or license from the Complainant to hold its said domain as alleged.

20. With reference to Para 5C of the Complaint I deny that Respondent's domain was registered in bad faith as alleged. The Respondents registration being prior to the registration of the Complainant's domain name itself is enough that the domain is not registered in bad faith. The Respondent has not developed any website for its said domain name and the domain name is parked by the Registrars. The Respondent is in no way connected to the parking of the domain name and is not gaining any advantage form the domain name as alleged.

21. With reference to para 6 of he said Complaint, I deny that the Complainant is entitled to have the Respondent's domain transferred in its name as alleged.

22. With reference to paras 7 to 9 of the Complaint the Respondent has noted the contents thereof and submit that the same needs no reply.

23. With reference to unnumbered para 10 I deny that the Complaint is not filed for improper purpose as alleged. I deny that the Complaint is filed not to harass the Respondent as alleged.

24. In the circumstances aforesaid, I respectfully submit that it is in the interest of the Justice, equity and fair play demands that the Complaint be dismissed with costs.

C. Additional Submissions

Complainant responded:

Respondent Failed to Meet the Requirements of NAF Rule 6(a)

As of February 1, 2007, Respondent was in default in this case. Respondent had filed neither a response to the Amended Complaint nor a request for an extension of time within which to respond. Rather, someone claiming to represent the registrant waited until February 16 to submit documents purporting to answer Complainant's claims. No request for additional time was included with those documents.

Complainant requests that the February 16 submission be disregarded by the Panel because it was out-of-time and because Respondent failed to follow the procedures set forth in NAF Rule 6(a) relating to extensions for filing responses. That rule provides, in part, as follows:

. . . Any request by the Respondent for an extension or any joint request by the parties for an extension must:

- A. be submitted *after the parties have first conferred with each other* to see if they could reach an agreement concerning the requested extension;
- B. be submitted in writing to the Forum and the parties *within the time for the Response to be submitted*;
- C. *state the exceptional circumstances warranting the request for an extension*;
- . . .
- E. be accompanied by an extension fee of \$100.

National Arbitration Forum Rule 6(a)(i) [*emphasis added*].

Rule 6(a)(ii) states that “[n]o request for extension will be approved if any of the

conditions set forth in Paragraph 6(a) have not been performed.”

Respondent has failed to meet the requirements of this rule in that (1) there was no attempt to contact or confer with Complainant in advance of the filing, (2) neither the response nor a request for extension was submitted within the allotted time, and (3) given Complainant’s full compliance with the rules regarding filing and service, it is unclear what exceptional circumstances might exist to warrant a late filing.

It is, in fact, unclear even that the person presenting the response is in a position to assert an excuse for delay. As of the date of Complainant’s filing, the registrant identified in the registrar’s WHOIS database was Private WHOIS c/o Privacy Protection (hereafter, “Private WHOIS”). Then, on February 12, after Respondent was already in default, the WHOIS database was changed to list “E.E.M” as the registrant. However, “E.E.M” is not the name given for the entity identified in the response.

In these circumstances, where there has been no attempt to comply with the rules and no apparent standing to respond, a late filing should not be permitted.¹

Complainant Has Established All Elements of Its Complaint.

Even if the submitted response is considered, Complainant has made its case. In order to obtain the relief requested, Complainant need only establish the following elements:

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

Complainant has established each of these elements.

The Disputed Domain Name Is Confusingly Similar to Complainant’s Marks.

The disputed domain name is confusingly similar to Complainant’s Marks. Complainant has already provided evidence of its right, title and interest in and to the Marks, as described and evidenced in the Amended Complaint and exhibits. The domain name itself is a common misspelling of Complainant’s name. Indeed, at least two panels have acknowledged that the substitution of the letter “z” for the letter “s,” its phonetic equivalent, is a common misspelling of the word “Enterprise,” and that such a misspelling will not serve to distinguish a domain name for purposes of the Policy. *See Enterprise Rent-A-Car Company v. Domaincar*, FA 664282 (Nat. Arb. Forum May 9, 2006); *Enterprise Rent-A-Car Company v. Spiral Matrix*, FA 608575 (Nat Arb. Forum

¹ Complainant has no knowledge as to whether the required fee was paid.

Jan. 25, 2006). *See also Pfizer Inc. v. Phizer's Antiques*, D2002-0410 (WIPO July 3, 2002) (finding a phonetic equivalent confusingly similar to the complainant's mark).

In addition, the domain name resolves to a website that contains numerous car rental references in its text, together with links to other car rental sites. Cases just like this one have already been decided in Complainant's favor, including cases involving the domain names <emterprise.com>, <enterprise4.com>, and <enterpise.net>. *See, e.g., Enterprise Rent-A-Car Company v. Marketing Total S.A.*, FA 843582 (Nat. Arb. Forum Dec. 29, 2006); *Enterprise Rent-A-Car Company v. Smith*, FA 660686 (Nat. Arb. Forum May 3, 2006); *Enterprise Rent-A-Car Company v. Kentech Co. Ltd.*, FA 445505 (Nat. Arb. Forum May 10, 2005), respectively.

Respondent Has No Rights or Legitimate Interests in the Domain Name.

It is important, first, to identify who the Respondent is. As noted above, at the time of Complainant's filing, the WHOIS database for the registrar listed the registrant as Private WHOIS. There is no contention here that Private WHOIS has any rights to or interests in the domain name. While Complainant understands that this registrant was likely merely a stand-in for the true domain name holder, Complainant has received no communication from the registrar or the National Arbitration Forum identifying that true holder as "Enterprize Event Management" – indeed, the current registrant (as of February 12) is listed simply as "E.E.M." There is no evidence that this registrant, or any other concerned party, is commonly known by the name "enterprize." Nor is there any evidence that the listed registrant has any trademark or other rights in or to that name. Whether a firm known as "Enterprize Event Management" pays taxes, as stated in the response, is irrelevant to any of these questions.

What we do know is that the disputed domain name is not being used in connection with any business allegedly conducted by "E.E.M" or by "Enterprize Event Management," or for the purposes of that business as it is described in the response. What the domain name is being used for is to tout car rental services and misdirect unsuspecting Internet users to car rental sites that compete with Complainant for business. This is not a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the domain name, as required under the Policy. *SCANA Corp. v. Jucco Holdings*, FA 888714 (Nat. Arb. Forum Feb. 19, 2007); *State Farm Mutual Automobile Ins. Co. v. Ping*, FA 849072 (Nat. Arb. Forum Jan. 8, 2007); *DLJ Long Term Inv. Corp. v. BargainDomainNames.com*, FA 104580 (Nat. Arb. Forum April 9, 2002).

Finally, although the response claims that the domain name has been registered since 1997, and the complaint is therefore barred by laches, Complainant has already established that, with respect to the named Respondent, the registration goes back no farther than December 22, 2006. In fact, the domain name was transferred to Respondent only *after* Complainant first filed its complaint against the preceding registrant on December 20. Complainant's rights and interests, including the registration of its domain names <enterprise.com> and <enterpriserentacar.com> clearly pre-date this registration. In any event, laches is not a defense under the Policy. *Mattel, Inc. v. Eastwind Groups*,

Ltd., FA 849009 (Nat. Arb. Forum Jan. 12, 2007).

The Disputed Domain Name Has Been Registered and Used in Bad Faith.

As clearly set forth in the Amended Complaint, this domain name has been registered and used in bad faith – the registrant, whether the named Respondent or someone else, has used a common misspelling of Complainant’s famous name and Marks to misdirect internet users to a website rife with car rental references and links, including links to Complainant’s competitors. Complainant adds only the following in response to the documents received on February 16.

First, whether the true domain name holder is Respondent or someone else, and whether or not the true holder is the one profiting from the site, the fact remains that either Respondent or someone else has control over the content of the site and continues to allow its improper use for a commercial purpose. As of this date, the website *still* contains links to Complainant’s competitors, and still contains no references to any business purportedly conducted by the domain name holder. This evidences bad faith, either by the named Respondent or by the true domain name holder. Either way, the domain name should be transferred to Complainant. *See Swedish Match UK Limited v. Admin, Domain*, FA 873137 (Nat. Arb. Forum Feb. 13, 2007) (respondent responsible for links because respondent allowed use); *Mattel, Inc. v. Eastwind Groups, Ltd.*, FA 849009 (Nat. Arb. Forum Jan. 12, 2007) (“Although Respondent claims to have received no financial gain from the archived web pages, there is inherent commercial purpose in making one’s website available for the display of sponsored commercial advertising links.”); *Fifth Third Bancorp v. Secure WHOIS Info. Serv.*, D2006-0696 (WIPO Sept. 14, 2006) (use of privacy protection service supported inference of bad faith, and service listed as registrant held responsible); *Dr. Ing h.c. F. Porsche AG v. Domains by Proxy, Inc. & Andreoni*, D2003-0230 (WIPO May 16, 2003) (entity that acts as a front must take responsibility for bad faith conduct).

Moreover, assuming for the sake of argument that the real party in interest is entity identified in the February 16 response, this is not the first time it has engaged in this type of conduct. The National Arbitration Forum has decided at least one other case in which it was found that Vanita Sehgal, the person responding as “partner” for “Enterprize Event Management,” engaged in the bad faith registration and use of a domain name. *See Citigroup Inc. v. Sehgal*, FA 670048 (Nat. Arb. Forum May 22, 2006) (finding that the domain name <wwwcitibankonline.com> was registered and used in bad faith). Such a pattern evidences bad faith. *See Compaq Information Techs. Group, L.P. v. Seocho*, FA 103879 (Nat. Arb. Forum Feb. 25, 2002); *Toyota Motor Sales v. Hamid*, D2001-0032 (WIPO March 28, 2001).

All of these facts demonstrate bad faith use and registration. In these circumstances, the domain name should be transferred to the Complainant.

Respondent further responded:

1) At the outset, I respectfully submit that the response of the complainant, for the reasons as stated hereinafter, is misconceived and not maintainable and the same is liable to be and should be dismissed.

2) Without prejudice to what is stated hereinabove and at the further outset the respondent denies all allegations made by the complainant in the said response.

3) With regard to the complainant's request that the panel disregard the out-of-time response to complainant's amended complaint, the respondent has already pointed out the procedures anomalies in their original reply in Para 7 (g), (h), (i), (j), (k), (l), (m), (n) & (o).

4) With regard to the complainant's contention that he has established all elements as required under the UDRP in his complainant, the respondent denies the same.

a) **The Disputed Domain Name is Confusingly Similar to Complainant's mark**

The domain name is distinctive and not just a substitution of letter 'z' by 's'. We have established this fact that the first documented use of the word 'enterprize' was in the year 1829. Subsequently the word is commonly used by everybody. <enterprize.com.au>, <enterprize.be>, <enterprizeentertainments.com>(UK based) etc. Also there are US based companies <enterprizecapital.com>, <enterprizecomputers.com>, <enterprizegifts.com>, etc. There is also a hotel in Australia know as Melbourne Hotel Enterprize (<hotelenterprize.com.au>). There are hundreds of other examples, by giving these the respondent establishes that the word "Enterprize" has been in common use and is distinct from the word "enterprise."

The complainant has alleged that the respondent's domain <enterprize.com> is a misspelling of their domain <enterprise.com>, but has failed to establish that how could a misspelled domain be registered before their domain. Respondent's domain <enterprize.com> has been registered on 30th September 1997 whereas the complainant's domain <enterprise.com> has been registered on 1st June 1998.

The complainant has cited several cases where they have won the UDRP involving domain names similar to their domain <enterprise.com>. None of the domains in these cases contained a distinct word "Enterprize" which is a commonly used word.

The complainant has failed to establish that the respondent's domain is confusingly similar to his mark.

The respondent states that the word "Enterprize" is a distinct word and has been in common use by several entities.

(b) Respondent has No Rights or Legitimate Interests in the Domain Name

The complainant has pointed out that it is important to identify who the respondent is. The respondent states that it was the duty of the registrar to correctly identify the owner of the domain and get them added as respondents in the complaint. The complainant states that the respondent firm Enterprize Event Management is merely a stand in for the true domain holder as the complainant did not receive any communication from the registrar or National Arbitration Forum that the registrant is Enterprize Event Management.

The registrar on record has confirmed to National Arbitration Forum that the registrant of the domain is E.E.M. which is an acronym for Enterprize Event Management. The address for E.E.M. is identical to the address of Enterprize Event Management. The said confirmation by the registrar on record proves that Enterprize Event Management is not merely a standin but the owner of the domain.

The respondent has proved beyond doubt that they are a firm know as Enterprize Event Management doing legitimate business, paying taxes etc in India. The respondent has established the fact under UDRP ¶ 4(c)(ii) that they are a business been commonly known by the domain name, even if the respondent has not acquired any trademark or service mark rights.

The respondent states the fact that the respondent carries on business under the name of Enterprize Event Management, giving them common law rights to the word “Enterprize.”

The respondent denies that the domain name has been acquired by the respondent after the complainant filed this complaint. The respondent puts the complainant to strict proof thereof. The mere changing of registrar does not imply changing the ownership of the domain name.

(c) The Disputed Domain Name Has Been Registered and Used in Bad Faith

In our original response and in this additional submission we have clearly demonstrated that the domain name is distinctive and not a common misspell of the complainant’s domain. The domain is parked by the registrar and the respondents are not directly or indirectly gaining from its use (registrar’s letter attached in original response).

With reference to the National Arbitration Forum decision mentioned, the said is sub judice in the Hon’ble Court and no inference can be made on the same until it is disposed by the Hon’ble Courts. No pattern of serial registration of domain names and using them in bad faith has been established against the respondent.

In view of the above it is very clear that the complainant is using the UDRP to reverse highjack the domain name of the respondent.

In the circumstances aforesaid, I respectfully submit that it is in the interest of Justice, equity and fair play demands that the Complaint be dismissed and a decision of reverse hijacking be given against the complainant.

FINDINGS

The Panel finds following were proven in this case:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the Respondent *has* 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.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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.”

It should be noted the amended complaint was sent to the registrant at the address disclosed on January 4, 2007 by Publicdomainsregistry.com (which was a privacy WHOIS registration – hence the title of this case). When Lead Networks Domains Pvt. Ltd. independently confirmed on February 14, 2007 that the <enterprize.com> domain name was registered with Lead Networks Domains Pvt. Ltd. and was locked, it gave the name of a different registrant and different contact information. This Panel did not order the National Arbitration Forum to give notice to the second set of contact information (to, in effect, “recommence the case”) for the following reasons:

1. The UDRP complaint was forwarded to the initial registrant on the date the complaint was filed, as disclosed by the Registrar’s agent with apparent authority. Whether or not the registrar’s agent had authority to respond to this is a matter between the registrar and its agent. The fact the agent had apparent authority is sufficient for these proceedings.
2. The privacy registration service has a duty to forward a copy of the UDRP complaint to their client. Whether or not the privacy registration service did so is an issue between the privacy service and the real registrant. When a principal selects an agent, the principal bears the risk the agent might not perform with complete fidelity to the principal’s instructions.

3. A copy of the UDRP complaint was emailed to postmaster@enterprize.com, which should have reached the real registrant in the ordinary course of business.
4. An email from DomainDisputes@LeadNetworks.in sent on Monday, February 12, 2007 at 10:53 AM makes it clear the actual registrant actually knew there was a UDRP proceeding pending.
5. The UDRP only requires substantial compliance and not perfect compliance. The risk of injury is small because of the Respondent's right to commence a *de novo* proceeding.
6. UDRP proceedings are proceedings "on the documents." Those involved in the process are entitled to reply upon the records they can obtain, including the name of the domain name registrar in the domain name WHOIS record on the date the proceeding is commenced.

Before the Panel's decision was issued, Respondent submitted a response. In light of the truly extraordinary circumstances surrounding the communication issues in this case, the Panel has elected to consider that response.

Paragraph 4(a) of the Policy requires that the 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the 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 the ENTERPRISE mark through registration of the mark with the USPTO (Reg. No. 1,343,167 issued June 18, 1985). *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark."); *see also 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.").

Respondent's <enterprize.com> domain name is confusingly similar to Complainant's ENTERPRISE mark because Respondent's domain name simply misspells Complainant's mark, using a "z" instead of a "s," a common mistake made by Internet users attempting to enter Complainant's <enterprise.com> domain name into their web browser. The two words are phonetically equivalent. This misspelling does not

sufficiently alter the mark to negate the confusingly similar aspects of Respondent's domain name under Policy ¶ 4(a)(i). *See Belkin Components v. Gallant*, FA 97075 (Nat. Arb. Forum May 29, 2001) (finding the <belken.com> domain name confusingly similar to the complainant's BELKIN mark because the name merely replaced the letter "i" in the complainant's mark with the letter "e"); *see also Hewlett-Packard Co. v. Zuccarini*, FA 94454 (Nat. Arb. Forum May 30, 2000) (finding the domain name <hewlitpackard.com> to be identical or confusingly similar to the complainant's HEWLETT-PACKARD mark).

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

Rights or Legitimate Interests

Once Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to show that it does have rights or legitimate interests pursuant to Policy ¶ 4(a)(ii). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist).

Complainant alleges Respondent is using the <enterprise.com> domain name to redirect Internet users to Respondent's website displaying links to competing goods and services. Respondent's use of the domain name to display links to Complainant's competitors is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). *See TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent's diversionary use of the complainant's marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant's competitors, was not a *bona fide* offering of goods or services); *see also 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).

However, Respondent need not have a *bona fide* use if Respondent is commonly known by the domain name (Policy ¶ 4(c)(ii)). While it takes some leap to decide EEM means Enterprise Event Management, this Panel is willing to make that leap. While this Panel understands how Complainant could not have figured out Respondent's proper name was

“Enterprise Event Management,” this Panel accepts Respondent’s evidence on this point. For the same reasons, the Panel finds there is no reverse domain hijacking in this case.

The Panel finds Policy ¶ 4(a)(ii) **NOT** satisfied.

Registration and Use in Bad Faith

While at first glance it appears harsh, this Panel finds Respondent has registered and is using the <enterprise.com> domain name in order to redirect Internet users to Respondent’s website displaying links Complainant’s competitors. Such use constitutes disruption and is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iii). See *EBAY, Inc. v. MEODesigns*, D2000-1368 (Dec. 15, 2000) (finding that the respondent registered and used the domain name <ebay.com> in bad faith where the respondent has used the domain name to promote competing auction sites); see also *S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant’s business). The Panel reaches this conclusion based upon two unusual factors:

1. Respondent has failed to develop a web site for a decade. It is hard to have a *bona fide* business reason to have a domain name for such a long period of time without exploiting it. Respondent has not given any explanation, much less a *bona fide* business reason.
2. Respondent concealed its WHOIS information. While there might be valid business reasons for doing so, Respondent did not advance any. It is hard to believe there is a valid business reason to keep the identity of a domain name owner secret.

Respondent is using the <enterprise.com> domain name to redirect Internet users who misspell Complainant’s mark to its own website. Domain name owners are routinely compensated for allowing parking pages such as the one at Respondent’s site. The links on Respondent’s site clearly prove respondent is using the parking page to generate revenue (for example, one link reads: <http://searchportal.information.com/?ep1=01480068UVsPWVALXVUMVV8GVhEDQRFGD00GG1QODBNGXVIGUg1qRA1LBBVcRBRcAxFnCAdaD2sKVg1RXg8GE0ZdWUZSDWpAG0hcWF9dD1tEAmcMAg5TB1ECVhNcFj5HVFZTCQBQDQVERTGYX XUEMDVVWFIRQ&query=Car%20Rental>). Hardly a clear click-through hyperlink. Respondent’s use of the <enterprise.com> domain name constitutes typosquatting, which is evidence of bad faith registration and use under Policy ¶ 4(a)(iii). See *Nat’l Ass’n of Prof’l Baseball League, Inc. v. Zuccarini*, D2002-1011 (WIPO Jan. 21, 2003) (“Typosquatting ... is the intentional misspelling of words with [the] intent to intercept and siphon off traffic from its intended destination, by preying on Internauts who make common typing errors. Typosquatting is inherently parasitic and of itself evidence of bad faith.”); see also *Dermalogica, Inc. v. Domains to Develop*, FA 175201 (Nat. Arb. Forum Sept. 22, 2003) (finding that the <dermatologica.com> domain name was a “simple

misspelling” of the complainant's DERMALOGICA mark which indicated typosquatting and bad faith pursuant to Policy ¶ 4(a)(iii).

Respondent is using the <enterprise.com> domain name to redirect Internet users to Respondent’s website displaying links to competing goods and services for the assumed profit of Respondent. Internet users may become confused as to Complainant’s affiliation with the disputed domain name and corresponding website because Respondent’s domain name is confusingly similar to Complainant’s ENTERPRISE mark. Respondent is profiting from this confusion with its special parking page. Respondent’s use of the <enterprise.com> domain name to display links to competing goods and services constitutes bad faith registration and use pursuant to Policy ¶ 4(b)(iv). *See AltaVista Co. v. Krotov*, D2000-1091 (WIPO Oct. 25, 2000) (finding bad faith under Policy ¶ 4(b)(iv) where the respondent’s domain name resolved to a website that offered links to third-party websites that offered services similar to the complainant’s services and merely took advantage of Internet user mistakes); *see also 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. Therefore, it is likely that 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.”).

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

DECISION

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: March 5, 2007

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