

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE
CANADIAN INTERNET REGISTRATION AUTHORITY
*DOMAIN NAME DISPUTE RESOLUTION POLICY***

Domain Name: *enterpirse.ca*

Complainants: Enterprise Holdings, Inc. and Enterprise Rent-A-Car Canada Limited

Registrant: Tyler Melanson

Registrar: Netfirms, LTD.

Service Provider: Resolution Canada Inc.

Panel: Timothy C. Bourne

A. The Parties

1. The Complainants are Enterprise Holdings, Inc. ("Enterprise") and Enterprise Rent-A-Car Canada Limited ("Enterprise Canada"). The Complainant Enterprise is based in St. Louis, Missouri, United States of America and the Complainant Enterprise Canada is based in Markham, Ontario, Canada.
2. The Registrant is Tyler Melanson.

B. Disputed Domain Name and Registrar

3. The disputed domain name is *enterpirse.ca* (the "Domain Name"). The registrar with which the Domain Name is registered is Netfirms, LTD. (the "Registrar"). The Domain Name was registered by the Registrant on

February 28, 2019.

C. Procedural History

4. This is an administrative dispute resolution proceeding pursuant to the *CIRA Domain Name Dispute Resolution Policy*, version 1.3 dated August 22, 2011 (the "Policy") and the *CIRA Domain Name Dispute Resolution Rules*, version 1.5 dated July 28, 2014 (the "Rules").
5. The Complainants filed the Complaint with Resolution Canada Inc. (the "Provider") on August 14, 2019. The Provider sent by e-mail to the Registrant English and French versions of the Notice of Complaint filed by the Complainants, along with electronic versions of the Complaint and annexes thereto. The Notice of Complaint explained that the Registrant had twenty (20) days from August 14, 2019 to file a Response to the Complaint with the Provider. No Response was filed by the deadline.
6. On September 20, 2019, the Provider appointed the Panel.
7. Based on the information forwarded by the Provider, the Panel holds that all technical requirements for the commencement and maintenance of this proceeding have been established.
8. The Panel is not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would create a need to alter the progress of the proceeding pursuant to paragraph 13.2 of the *Rules*.

D. Panellist Impartiality and Independence

9. As required by paragraph 7 of the *Rules*, the Panel, Timothy C. Bourne, has submitted to the Provider a declaration of impartiality and independence for

this dispute.

E. Effect of Failure of Registrant to File a Response

10. Paragraph 5.8 of the *Rules* provides that “[i]f a Registrant does not submit a Response within the period for submission of a Response or any period extended ... the Panel shall decide the Proceeding on the basis of the Complaint ...”. Accordingly, the Panel will decide this matter based on the arguments submitted by the Complainants.

F. Remedy Sought

11. In accordance with paragraph 4.3 of the *Policy*, the Complainants have requested that the registration for the Domain Name be transferred to the Complainant Enterprise Canada.

G. Applicable Law

12. In accordance with paragraph 12.1 of the *Rules*, the Panel shall apply the laws of Ontario and the laws of Canada applicable within Ontario. Also, as stated in paragraph 4.2 of the *Policy* and paragraph 3.2(m) of the *Rules*, the Panel will render its decision in accordance with the *Policy* and the *Rules*.

H. Eligibility of the Complainants

13. Under paragraph 1.4 of the *Policy*, a complainant must satisfy CIRA’s *Canadian Presence Requirements for Registrants* (the “*CPR*”) unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant owns the trademark.
14. The Complainant owns numerous trademarks registered with CIPO and is

thus an eligible complainant under the Policy. The Complainant Enterprise Canada meets the *CPR* under paragraph 2(d) as a company incorporated pursuant to the laws of the province of Nova Scotia and is thus an eligible complainant under the Policy.

I. Facts

15. The Complainants make a number of unchallenged assertions, including the following:
 - the Complainant Enterprise, through regional subsidiaries and franchises, operates the Enterprise Rent-A-Car brand. There are presently more than 7,800 Enterprise Rent-A-Car locations globally;
 - the Complainant Enterprise Canada is a Nova Scotia corporation and a wholly owned Canadian operating subsidiary;
 - the Complainant Enterprise, through its Canadian operating subsidiary companies and franchisees, is the largest car rental company in Canada, employs more than 5,700 employees and operates a fleet of over 100,000 vehicles through the Enterprise Rent-A-Car, National Car Rental and Alamo Rent-A-Car brands;
 - the Complainant Enterprise owns numerous registered trademarks in Canada featuring the term ENTERPRISE. The Complainant Enterprise and its predecessors-in-title, through wholly owned, operating subsidiary companies, including Enterprise Canada, have been using trademarks consisting of or incorporating the term ENTERPRISE in Canada since at least as early as 1993;
 - the Complainant Enterprise's annual worldwide sales figures have

steadily climbed to US\$24.1 billion in 2018 and CDN\$1.2 billion in Canada in 2017;

- the Complainant Enterprise has spent at least CDN\$3 million in advertising in Canada annually since 2010;
 - the Complainant Enterprise promotes its business and advertises its goods and services in Canada in association with trademarks incorporating the term ENTERPRISE on the website located at the URL <http://www.enterprise.com> and has done so since at least as early as 1999;
 - the Complainant Enterprise Canada promotes and advertises under licence goods and services offered in association with trademarks incorporating the term ENTERPRISE to the Canadian market using domain names that include or consist of the licensed trademark ENTERPRISE, including the domain name *enterprise.ca*; and
 - the Complainant Enterprise Canada owns the registration for the domain name *enterprise.ca*.
16. On or about July 1, 2019, the Complainant Enterprise became aware that the Domain Name was resolving to the website located at the URL <http://www.carrentals.com>, an Expedia group company. CARRENTALS.COM is a business that compares rates from car rental providers and provides consumers with options for renting vehicles. Enterprise contacted Expedia, which stated that it did not own the Domain Name but that "it may be owned by a marketing affiliate that has a PPC arrangement to drive traffic" (PPC being an acronym for "pay per click").
17. Through its counsel, the Complainant Enterprise sent a message to the Registrant through CIRA's Message Delivery Form service demanding that

the Registrant cease using the Domain Name. No response was received.

18. The Complainant Enterprise's authorized representative requested from CIRA a list of domain names owned by the Registrant. The list includes forty domain names, most of which are names of well-known businesses and trademarks incorporating typographical errors.

J. Complainant's Contentions

i. Domain Name is Confusingly Similar to a Mark in Which the Complainant Had Rights Prior to the Domain Name Registration Date and Continues to Have Such Rights

19. The Complainant Enterprise's registered trademarks consisting of or incorporating the term ENTERPRISE each predate the registration of the Domain Name and are each confusingly similar to the Domain Name since they are identical to the Domain Name.

ii. The Registrant Has No Legitimate Interest in the Domain Name

20. The Complainants submit that none of the enumerated circumstances constituting a legitimate interest from paragraph 3.4 of the *Policy* exist with respect to the Registrant and Domain Name.

iii. The Domain Name Was Registered in Bad Faith

21. The Complainants submit that each of the circumstances enumerated in subparagraphs 3.5(d) and 3.5(b) of the *Policy* exist. The Complainants have provided detailed arguments in support of both bad faith grounds.

K. Discussion and Finding

22. Paragraph 4.1 of the *Policy* provides that, to succeed, the Complainants must prove, on a balance of probabilities, that:
 - (a) the Domain Name is Confusingly Similar to a Mark in which the Complainants had Rights prior to the date of registration of the Domain Name and continues to have such Rights; and
 - (b) the Registrant has registered the Domain Name in bad faith as described in paragraph 3.5.
23. Paragraph 4.1(c) of the *Policy* also states that the Complainants must provide some evidence that:
 - (c) the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.4.

L. Confusingly Similar – Paragraph 3.3 of the *Policy*

24. To satisfy this branch of the test, the Complainants must demonstrate that one of them had Rights in a Mark that predate the registration of the Domain Name. Also, the Complainants must demonstrate that the Domain Name is confusingly similar with the Mark.
25. The Complainants evidenced numerous Canadian trademark registrations for trademarks consisting of or incorporating the term ENTERPRISE, including registration Nos. TMA508,117, TMA535,866 and TMA537,905, each for the trademark ENTERPRISE. Each of the registrations issued prior to the date on which the Domain Name was registered. Accordingly, the Complainant Enterprise's registered trademarks predate the Domain Name registration date and the Complainant Enterprise's registered trademarks are a proper

basis for finding that the Complainant Enterprise had Rights in a Mark prior to the date on which the Domain Name was registered.

26. The Domain Name is confusingly similar with the Complainant Enterprise's trademark ENTERPRISE. The Complainant agrees that the relevant portion of the Domain Name, ENTERPIRSE, is an intentional misspelling of the Complainant Enterprise's trademark ENTERPRISE and obviously constitutes typo-squatting. The Panel agrees that an intentional misspelling does not negate the confusing similarity between a trademark and domain name (see *Enterprise Holdings, Inc. v. Terry Wade Davies*, May 27, 2016, BCICAC DCA-1768-CIRA, *Indeed, Inc. v. Lay*, September 13, 2016, BCICAC DCA-1806-CIRA, *AMAZON.com Inc. v. David Abroham*, July 28, 2004, DCA-784-CIRA and *Home Depot International, Inc. and Home Depot of Canada Inc. v. Terry Davies*, October 13, 2016, DCA-1817-CIRA). Indeed, the practice of typo-squatting very obviously relies on consumer confusion to generate traffic to a website.
27. Accordingly, the Domain Name is confusingly similar to the Complainant Enterprise's trademark ENTERPRISE, which was registered by the Complainant Enterprise prior to the Domain Name registration date.

M. Bad Faith – Paragraph 3.5 of the Policy

28. The Complainants need only to demonstrate bad faith under one of the grounds provided in paragraph 3.5 of the *Policy*. Thus, the Panel will address only whether bad faith exists under paragraph 3.5(d) of the *Policy*. That provision provides that the following circumstance constitutes registration of a domain name in bad faith:

the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or

other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

29. The Registrant has intentionally attempted to attract internet users to the CARRENTALS.COM website by creating a likelihood of confusion with the Complainant Enterprise's trademark ENTERPRISE as to the source, sponsorship, affiliation, or endorsement of the CARRENTALS.COM website. The CARRENTALS.COM website encourages consumers to "search for a car rental" and displays the trademarks of many well-known car rental companies. These services are identical to the Complainants' services and thus internet users may erroneously conclude that the Complainants are related to the provider of such services.
30. The Panel also is satisfied that the Domain Name resolving to the CARRENTALS.COM website leads to commercial gain for the Registrant. Other panels have inferred that individuals derive financial benefit by using domain names which promote third party businesses (*Calgary Exhibition and Stampede Ltd. v. Squires* (CIRA Decision No. 00229, May 10, 2013)). Indeed, Expedia admitted that the domain name may generate pay per click revenue. Additionally, it has been held that actual profit need not be established for a panel to conclude that the Registrant's efforts are for commercial gain (*Victoria's Secret Stores Brand Management, Inc. v. Poustie* (CIRA Decision No. 00263, June 20, 2014)).
31. The Panel thus concludes that the Registrant registered the Domain Name in bad faith pursuant to paragraph 3.5(d) of the *Policy*.
32. The Panel also is persuaded by the Registrant's failure to respond to a cease and desist letter sent by counsel for the Complainants and that the Registrant has not made any submissions to the Panel, including submissions

suggesting that the Domain Name is not registered in bad faith.

N. Legitimate Interest – Paragraph 3.4 of the Policy

33. Paragraph 3.4 of the *Policy* provides that:

For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- (b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;
- (c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- (d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- (e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- (f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In paragraph 3.4(d) "use" by the Registrants includes, but is not limited to, use to identify a web site.

34. The Complainants' unchallenged allegation is that the Complainant Enterprise has not permitted or licenced the Registrant the right to use any trademark consisting of or incorporating the trademark ENTERPRISE. The Registrant clearly did not register the Domain Name in Canada in good faith. The Registrant has no rights in the trademarks ENTERPRISE or ENTERPIRSE. Additionally, the Domain Name does not clearly describe any aspect of the Registrant's goods, services or business nor is there any evidence before the Panel that the Domain Name is understood to be the generic name of any goods, services or business in any language. Accordingly, the Registrant has no legitimate interest in the Domain Name under paragraph 3.4(a), 3.4(b) or 3.4(c) of the *Policy*.
35. There is also no evidence before the Panel that the Registrant has used the Domain Name for a non-commercial activity. Indeed, accordingly to the evidence, the Domain Name may generate pay per click revenue and resolves to the CARRENTALS.COM website, which is obviously a commercial enterprise for comparing car rental options.
36. In accordance with the finding regarding bad faith, the Panel repeats that the evidence demonstrates that the Registrant used the Domain Name for profit and thus the Registrant has no legitimate interest under paragraph 3.4(d) of the *Policy*.
37. The Domain Name is not the legal name of the Registrant Tyler Melanson. Nor is there any evidence or suggestion that the Domain Name is a name, surname, or other reference by which the Registrant is commonly identified. Thus, the Registrant has no legitimate interest under paragraph 3.4(e) of the *Policy*.

38. Finally, there is no evidence before the Panel that the Domain Name is a geographical name and thus cannot constitute the geographical name of the Registrant's place of business. Accordingly, the Registrant has no legitimate interest under paragraph 3.4(f) of the *Policy*.
39. The Panel thus concludes that the Complainants have provided some evidence that the Registrant has no legitimate interest in the Domain Name. The onus thus shifts to the Registrant to prove, on a balance of probabilities, that it has a legitimate interest in the Domain Name. The Registrant has not filed any submissions disputing the Complainants' submissions or justifying its registration or use of the Domain Name and thus has failed to meet its onus.

O. Conclusion and Decision

40. For the reasons set forth above, the Panel concludes that the Complainants have established the three elements of the basis for the Complaint in accordance with their respective onuses. Thus, the Panel orders the transfer of the registration for the Domain Name to the Complainant Enterprise Canada.

October 11, 2019



Timothy C. Bourne
Sole Panellist