

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. gterg dfgedqw, bfgdfd
Case No. D2023-5397

1. The Parties

The Complainant is HomeAway.com, Inc., United States of America (“United States”), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is gterg dfgedqw, bfgdfd, China.

2. The Domain Names and Registrar

The disputed domain names <hotelvrbo-a1.com>, <hotelvrbo-b1.com>, <hotelvrbo-c1.com>, <hotelvrbo-d1.com>, <hotelvrbo-e1.com>, <hotelvrbo-f1.com>, <travelvrbo-ai.com>, <travelvrbo-net.com>, <travelvrbo-opt.com>, <travelvrbo-top.com> and <travelvrbo-wto.com> are registered with Name.com, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Domains Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 10, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 12, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 19, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

According to information in the Complaint, the Complainant is owned by Expedia, Inc., one of the world's largest travel companies, who acquired the Complainant and its brands, including VRBO, in November 2015. The Complainant is a global online marketplace for the vacation rental industry, with sites currently representing over two million online bookable listings of vacation rental homes and apartments in over 190 countries. For nearly twenty-five (25) years, property rental services have been offered under the VRBO mark by the Complainant and its predecessors.

The Complainant is the holder of a number of trademarks for VRBO, including the United States trademark No. 5681113 for VRBO (word) registered on February 19, 2019 for classes of goods and services 9 and 43, or the United States trademark No. 2820989 for VRBO (word) registered on March 9, 2004 for class of services 36 or the China trademark No. 33372168 for VRBO (word) registered on May 14, 2019 for class of services 43. The Complainant has registered the domain name <vrbo.com> since July 30, 1996, that it uses to promote its services.

The Complainant also uses its VRBO mark for its various social media platforms (such as Facebook, Instagram, Youtube) and operates mobile applications offering its services. The Complainant received various awards over the years for its activity, including being the winner of world and United States Luxury Lifestyle Award in 2019 and 2018 respectively in the Villa Rental and Accommodations Services, being ranked the #3 most innovative global brand in 2018 by The Muse, a Gold Award in Bulldog Reporter's 2014 Digital/Social Awards and Customer Service Department of the Year - Bronze awards in the Stevie Awards for Sales & Customer Service in 2017 and 2015, and was listed in the top ten of United States Today's Best App/Website for Booking Your Stay in 2015.

The disputed domain names <travelvrbo-ai.com>, <travelvrbo-net.com>, <travelvrbo-opt.com>, <travelvrbo-top.com>, <travelvrbo-wto.com> were registered on December 1, 2023 and the disputed domain names <hotelvrbo-a1.com>, <hotelvrbo-b1.com>, <hotelvrbo-c1.com>, <hotelvrbo-d1.com>, <hotelvrbo-e1.com>, <hotelvrbo-f1.com>, were registered on December 13, 2023, and according to evidence with the Complaint, they resolved at the date of the Complaint to login pages reproducing the VRBO trademark and containing a copyright notice suggesting that the Complainant is operating the webpage. At the date of the decision, the disputed domain names resolve to websites displaying the message: "Dangerous site. Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone or credit card number. Chrome strongly recommends going back to safety. Learn more."

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's distinctive VRBO mark, as they fully incorporate the Complainant's VRBO mark. The use of common words, such as "hotel", "travel", or "top", and/or abbreviations, such as "ai", "net", "opt" or the like, in the disputed domain names does not distinguish the disputed domain names from the Complainant's VRBO mark, as VRBO is clearly identifiable and the primary and dominant element of the disputed domain names.

As regards the second element, the Complainant argues that the Respondent is not commonly known by the disputed domain names, particularly as the Respondent has used fake contact information for the disputed domain names. Also, there is no relationship between the Complainant and the Respondent giving rise to any license, permission, or other right by which the Respondent could own or use any domain name incorporating the exact VRBO mark. The Respondent is neither using the disputed domain names in connection with a bona fide offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain names. The Respondent has used the disputed domain names, without permission or authorization from the Complainant, to capitalize on the VRBO name and mark solely for commercial gain. The Respondent has used, and is using, the disputed domain names as part of a fraudulent scheme to impersonate the Complainant in order to trick unsuspecting consumers into providing login or other personal information for the financial or other benefit of the Respondent. Such use of the disputed domain names to impersonate the Complainant as part of a fraudulent scheme is not a legitimate interest or bona fide use.

With respect to the third element, the Complainant contends that given its longstanding use of the trademark VRBO, it is not feasible to believe that the Respondent was unaware of the VRBO mark, particularly in view of the Respondent's registration of multiple disputed domain names based on the VRBO mark and their use to impersonate the Complainant. The Respondent's bad faith registration of the disputed domain names is established by the fact that the eleven disputed domain names that completely incorporate the Complainant's exact VRBO mark, were registered long after the Complainant's rights in its VRBO mark were established and the Complainant registered the VRBO mark, and after the Complainant's services became well-known.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “hotel”, “travel”, “a1”, “b1”, “c1”, “d1”, “e1”, “f1”, “ai”, “net”, “opt”, “top”, “wto”, and hyphens) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Complainant has proved it holds rights over the trademark VRBO, and claims that the Respondent has no legitimate reason to register or acquire the disputed domain names. There is no evidence that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain names. Rather, according to unrebutted evidence with the Complaint, the disputed domain names were associated to a login page for VRBO, where Internet users were prompted to login introducing their username and password. The login page displayed the VRBO trademark prominently and a copyright notice as follows: “V.1.2.20 VRBO All Rights Reserved.” Therefore, through the disputed domain names the Respondent is seeking to impersonate the Complainant and to obtain personal information through fraudulent means. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent’s part.

Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the nature of the disputed domain names, which includes terms pertaining to the Complainant’s industry, such as “hotel” or “travel”, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

There is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

According to the unrebutted evidence of the Complainant, its VRBO trademark was widely used in commerce well before the registration of the disputed domain names. The disputed domain names are confusingly similar with the Complainant's trademark and contain terms pertaining to the Complainant's industry, such as "hotel" or "travel". Given the circumstances in the case, the Panel considers that the Respondent must have had knowledge of the Complainant's rights in the VRBO trademarks when it registered the disputed domain names, and it has intentionally created a likelihood of confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

The Complainant has provided evidence suggesting that the Respondent, through use of the active disputed domain names, is conducting what appears to be a fraudulent scheme to collect Internet users' personal data through a contact form on the website at the disputed domain names. Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Further, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions or provide any evidence of actual or contemplated good-faith use. The Respondent's bad faith is reinforced by the Respondent's use of a fake address to which the courier delivery could not be made. Also, the Respondent's bad faith registration and use of the disputed domain names can also be inferred from the current warnings on the relevant websites, that the disputed domain name resolves to a website that is deceptive, stating that "Dangerous site. Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone or credit card number. Chrome strongly recommends going back to safety. Learn more".

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <hotelvrbo-a1.com>, <hotelvrbo-b1.com>, <hotelvrbo-c1.com>, <hotelvrbo-d1.com>, <hotelvrbo-e1.com>, <hotelvrbo-f1.com>, <travelvrbo-ai.com>, <travelvrbo-net.com>, <travelvrbo-opt.com>, <travelvrbo-top.com>, and <travelvrbo-wto.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: March 4, 2024