

## **ADMINISTRATIVE PANEL DECISION**

Trivago N.V. v. Hildegard Gruener  
Case No. D2023-0205

### **1. The Parties**

The Complainant is Trivago N.V., Germany, internally represented.

The Respondent is Hildegard Gruener, Austria.

### **2. The Domain Names and Registrar**

The disputed domain names <trivago-hotels-flight-vacation.com> and <trivago-travel-search.com> are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2023. On January 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 18, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2023, 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 31, 2023.

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 February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on March 28, 2023. 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**

The Complainant operates a worldwide hotel comparison website. The Complainant is the owner of registered trademarks in the mark TRIVAGO, amongst which:

International Trademark No. 910828 for TRIVAGO, registered on August 18, 2006, in International Classes 35, 38, 39 and 42.

International Trademark No. 1211017 for TRIVAGO, registered on November 18, 2013, in International Classes 35, 38, 39, 42 and 43;

Austrian Trademark No. 12129565 for TRIVAGO, registered on February 7, 2014, in International Classes 35, 38, 39, 42 and 43;

Austrian Trademark No. 12129607 for TRIVAGO (figurative), registered on March 27, 2014, in International Classes 35, 38, 39, 42 and 43;

United States of America Trademark No. 87125411 for TRIVAGO, registered on March 7, 2017, in International Class 9;

United States of America Trademark No. 87125429 for TRIVAGO (figurative), registered on May 30, 2017, in International Classes 9, 35, 39 and 43.

The disputed domain names <trivago-hotels-flight-vacation.com> and <trivago-travel-search.com> have been registered on February 28, 2020, and January 7, 2022, respectively, well after the Complainant secured rights to the abovementioned TRIVAGO trademark. According to evidence submitted by the Complainant, the disputed domain name <trivago-hotels-flight-vacation.com> resolves to a pay-per-click ("PPC") website showing the disputed domain name <trivago-hotels-flight-vacation.com> and three links to other travel related websites. Further evidence shows that the disputed domain name <trivago-travel-search.com> resolves to a website named "Trivago - Compare hotel, flight and car rental prices worldwide!" purportedly providing hotel, flight and car rental comparison services but, in reality, also only linking to other websites. In addition, the mark TRIVAGO is used throughout this website and the font coloring used for words like "hotels", "flights" and "car rental" is the same as used by the Complainant in its figurative TRIVAGO mark.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts that each of the three elements specified in paragraph 4(a) of the Policy are present. The three elements being: (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.

(i) The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant contends that the disputed domain names are confusingly similar to its trademarks since they incorporate the Complainant's abovementioned TRIVAGO trademarks in their entirety. Moreover, the Complainant claims that since its trademarks are recognizable within the disputed domain names, the addition of other terms (such as "travel-search" or "hotels-flight-vacation") would not prevent a finding of confusing similarity under the first element.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain names. First, the Complainant is in no way affiliated with the Respondent and has not licensed or permitted the Respondent to use its trademarks in any fashion. Second, no trademark registration for the term “trivago” in favor of the Respondent can be retrieved from the WIPO Global Brand Database or the Austrian Trademark Database. Finally, the Respondent is not making a *bona fide* or legitimate noncommercial or fair use of the disputed domain names. Both websites that the disputed domain names resolve to are falsely suggesting that the Respondent is somehow affiliated or otherwise connected to the Complainant and thus attracting Internet users to its website for financial gain, which does not constitute a “legitimate” or “fair” use under the Policy.

(iii) The disputed domain names have been registered and are being used in bad faith.

The Complainant points to the fact that the disputed domain names contain the mark of the Complainant in its entirety. Second, the Respondent does not use the disputed domain names to offer any kind of goods or services but rather uses these as a click generator. Based on the popularity of the Complainant’s TRIVAGO mark it is highly unlikely that the Respondent was not aware of it. Furthermore, there is no obvious reason as to why the Respondent should be entitled to use the Complainant’s TRIVAGO mark. There is no similarity between the Respondent’s name/brand and this mark. Also, TRIVAGO does not have any lexical meaning but is a completely imaginary term; a mere coincidence of use by the Respondent can, therefore, be excluded according to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Panel finds that it has jurisdiction to hear this dispute as the Policy has been incorporated by reference into the registration agreement between the Registrar and the Respondent.

The Panel notes that while the Respondent has been duly notified, it did not reply to the Complainant’s contentions within the time period established by the Rules. Pursuant to paragraph 14 of the Rules the Panel shall nonetheless proceed to a decision on the Complainant’s complaint and it may draw such inferences from the Respondent’s failure to respond as it considers appropriate.

Paragraph 4(a) of the Policy requires that in order for its complaint to succeed, the Complainant must prove that the following three elements are present:

- (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.

The above three elements will each be discussed in further detail below.

### **A. Identical or Confusingly Similar**

The Complainant is required to establish: (1) that it owns rights in a trademark or service mark, and, if so, (2) that the disputed domain name is identical or confusingly similar to its trademarks.

Firstly, the Panel finds that the Complainant has clearly evidenced that it owns registered trademark rights to the TRIVAGO mark. The Panel is satisfied with the evidence provided in support of the existence of trademarks for or containing the word “trivago”. Some of the registered trademarks that the Complainant

relies on are figurative, however even these can be taken into account to show “rights in a mark” since the dominant portion of these trademarks is the word “trivago”. It is a consensus view of UDRP panels, with which the Panel agrees, that trademark registrations with design elements can *prima facie* satisfy the requirement that a complainant shows “rights in a mark” so long as the textual elements are not overtaken (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.10). Finally, it should be noted that paragraph 4(a)(i) of the Policy does not set minimum requirements as to the jurisdictions of the trademarks a complainant relies on, nor as to the number, nature or scope of protection of such trademarks.

Secondly, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s registered trademarks since they both incorporate the TRIVAGO mark of the Complainant in its entirety (see [WIPO Overview 3.0](#), section 1.7, as well as *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); *Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#); and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. [D2000-0113](#)). As the TRIVAGO mark is recognizable within both disputed domain names, the addition of “hotels”, “flight” and “vacation” in one disputed domain name and “travel” and “search” in the other does not prevent the Panel’s finding of confusing similarity under the first element. It is a well-established view of UDRP panels, with which the Panel agrees, that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see for instance: *Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd.*, WIPO Case No. [D2001-0110](#); *Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#); *M/s Daiwik Hotels Pvt. Ltd v. Senthil Kumaran S, Daiwik Resorts*, WIPO Case No. [D2015-1384](#); and *BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#)).

Finally, as for the applicable Top-Level Domain (“TLD”), *i.e.*, the suffix “.com”, the Panel holds that this can be disregarded under the first element confusing similarity test (*CANAL + FRANCE v. Franck Letourneau*, WIPO Case No. [DTV2010-0012](#); *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); and *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, this Panel finds and concludes that the disputed domain names are confusingly similar to the Complainant’s trademarks.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that shall demonstrate a right or legitimate interest:

“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 your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

It is a well-established view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant is generally sufficient to satisfy the requirements under paragraph 4(a)(ii) of the Policy, and the burden of production shifts to the respondent to provide relevant evidence demonstrating rights or

legitimate interests in the disputed domain name (*AGUAS DE CABREIROA, S.A.U. v. Hello Domain*, WIPO Case No. [D2014-2087](#); *Spigen Korea Co., Ltd., Spigen Inc. v. Domain Admin, Whols Privacy Corp.*, WIPO Case No. [D2016-0145](#); and *HubSpot, Inc. v. WholsGuard Protected, WholsGuard, Inc. / Steve Johnson*, WIPO Case No. [D2016-1338](#)).

The Panel notes that the Respondent has not responded to any of the Complainant's contentions, let alone submitted evidence to the contrary, and that, pursuant to paragraph 14 of the Rules, the Panel may draw such inferences from the Respondent's failure to respond as it considers appropriate. In the present case, taking into consideration the Respondent's default, this Panel finds that the Complainant has made out an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, in view of the circumstances of this case, including the following factors.

The Panel finds that there is no evidence that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. The fact that the disputed domain names are confusingly similar to the Complainant's trademarks and include terms related to the Complainant's business carries a risk of implied affiliation. This risk appears to have materialised already since the design and content of the websites that the disputed domain names resolve to, including the use of the Complainant's TRIVAGO trademarks and language suggesting that travel related comparison services are offered, may indeed have led consumers to be confused about the source of the website and whether the website is sponsored or otherwise endorsed by the Complainant. It should also be noted that neither of the websites accurately and prominently discloses the lack of relationship between the Respondent and the Complainant. As is clear from sections 2.2, 2.5, and 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), UDRP Panels have consistently found that such use of a domain name can neither be considered legitimate noncommercial or fair use of the domain name nor a *bona fide* offering of goods or services.

In addition, the Complainant asserts that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademarks. The Panel has taken note of the Complainant's confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Finally, the Panel notes that there is no evidence that the Respondent has been commonly known by the disputed domain names. The name of the Respondent does not have any similarity with the disputed domain names and neither does the Respondent appear to be trading under such names.

For all the foregoing reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy non-exhaustively lists four circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the domain name in bad faith:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that the circumstances and evidence presented by the Complainant offer sufficient proof that both the Respondent's registration and current use of the disputed domain names are in bad faith.

The Panel will first discuss the Respondent's registration of the disputed domain names. The Panel believes that the Respondent knew or, should have known at the time of registration that the disputed domain names included the Complainant's abovementioned TRIVAGO trademarks. The Panel agrees with the Complainant that, given the Complainant's operations under the TRIVAGO mark since 2006 and its business having spread to 190 countries worldwide, the Respondent should have known about the Complainant at the time of registration. Furthermore, the TRIVAGO trademarks have been registered in different countries and existed for a long time prior to the Respondent's registration of the disputed domain names. Moreover, the word "trivago" does not have any dictionary meaning and the Respondent has not provided a reasonable explanation for adoption of this mark. The Respondent's knowledge of the Complainant and its abovementioned TRIVAGO trademarks and therefore its registration in bad faith of the disputed domain name may already be inferred from these circumstances alone (see Section 3.2.2 of the [WIPO Overview 3.0](#) and in particular: *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#); and *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. [D2007-0950](#)). This conclusion is further enhanced by the Respondent's use of the disputed domain names which is discussed below.

The Panel finds that the use of the disputed domain names subsequent to registration only serves as further (unrebutted) evidence that the Respondent knew about the Complainant and its TRIVAGO trademarks at the time of registration of the disputed domain names. The fact that the websites to which the disputed domain names resolve use the TRIVAGO trademarks (without the Complainant's permission) in combination with travel related comparison services is a further indicator that the Respondent was aware of the Complainant, the nature of its business and the TRIVAGO mark when it registered the disputed domain names.

The Panel believes that the Complainant has also convincingly demonstrated that the disputed domain names have been used in bad faith, namely to attract, for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the TRIVAGO trademarks as to the source, sponsorship, affiliation, or endorsement of the websites (Paragraph 4(b)(iv) of the Policy). In addition, the design and content of the websites that the disputed domain names resolve to, including the use of the Complainant's TRIVAGO trademarks and language suggesting that travel related comparison services are offered, falsely suggest affiliation with the Complainant and may indeed have led consumers to be confused about the source of the website and whether the website is sponsored or otherwise endorsed by the Complainant. It should also be noted that neither of the websites accurately and prominently discloses the lack of relationship between the Respondent and the Complainant. Finally, the Respondent's retention of control of the disputed domain names represents an implied and ongoing threat to the Complainant, which further supports a finding of bad faith.

In light of the above, the Panel finds that the disputed domain names were registered and are being used by the Respondent in bad faith.

## 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, <trivago-hotels-flight-vacation.com> and <trivago-travel-search.com>, be transferred to the Complainant.

*/Benoit Van Asbroeck/*

**Benoit Van Asbroeck**

Sole Panelist

Date: April 11, 2023