

ADMINISTRATIVE PANEL DECISION

Viva Holidays Ltd v. ajay arora

Case No. D2024-1932

1. The Parties

The Complainant is Viva Holidays Ltd, United Kingdom (“UK”), represented by Adlex Solicitors, UK.

The Respondent is ajay arora, UK.

2. The Domain Name and Registrar

The disputed domain name <weekenderbreaks.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 8, 2024. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name 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 May 13, 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 May 15, 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 May 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on June 20, 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

The Complainant is a UK limited company. It was formed in 2007 and has traded as a travel agency under the name WEEKENDER BREAKS since approximately 2012. It has operated a website at "www.weekender-breaks.co.uk" since that date.

The Complainant does not claim any registered trademark rights. However, it submits that it has common law trademark rights in the mark WEEKENDER BREAKS for reasons which are set out below.

The Complainant's operations include commercial arrangements with voucher companies including Groupon and Wowcher. It asserts (and the Respondent does not dispute) that the Respondent was the Complainant's account manager at Groupon from December 2013 until a date following the end of the Covid pandemic.

The Respondent registered the disputed domain name on February 21, 2014.

On August 6, 2018, the disputed domain name resolved to the Complainant's own website referred to above.

On December 28, 2021 (and on April 11, 2024) the disputed domain name resolved to a website at "www.traveloffr.co.uk". The website was headed "traveloffr" and appeared to offer flight and hotel holiday deals in destinations including Europe and the United States of America.

5. Parties' Contentions

A. Complainant

The Complainant claims total revenue of GBP 54 million earned under the WEEKENDER BREAKS mark in the period from 2014 to 2023. It provides evidence that it has launched approximately 1,800 Groupon deals since 2014 and has paid over GBP 7 million to Groupon since that date. The Complainant contends that these were effectively marketing payments. The Complainant also provides evidence of press and social media coverage of its business activities.

The Complainant submits that, as a result of the matters referred to above, it has obtained common law trademark rights in the mark WEEKENDER BREAKS. It contends in particular that that mark has become recognized by the public as referring to the Complainant's travel agency services.

The Complainant submits that the disputed domain name is identical to its WEEKENDER BREAKS trademark. It contends that names which include a descriptive element can generate common law trademark rights for the purposes of the Policy where there has been sufficient use of the name in question (see e.g., *Emmanuel Vincent Seal trading as Complete Sport Betting v. Ron Basset*, WIPO Case No. D2002-1058). The Complainant further submits that the Respondent's obvious targeting of the Complainant's trademark supports its status as a source identifier (see e.g. section 1.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends that the Respondent has not been commonly known by the disputed domain name and that it has made neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant states that, after learning in 2018 that the Respondent had registered the disputed domain name, it approached the Respondent verbally requesting the transfer of the disputed domain name. It states that the Respondent agreed to revert on the matter but never did so. The Complainant also exhibits an exchange of WhatsApp messages, in Hindi, which it claims evidences further prevarication on the Respondent's part. The Complainant claims that these exchanges amount to an implied acceptance by the Respondent that it has no rights or legitimate interests in respect of the disputed domain name.

The Complainant submits that the Respondent clearly registered and has used the disputed domain name for the purpose of confusing and profiting from Internet users who are seeking the Complainant, which cannot give rise to rights or legitimate interests in respect of the disputed domain name.

For similar reasons, the Complainant submits that the disputed domain name was registered and is being used in bad faith. It states that the Respondent was obviously aware of its WEEKENDER BREAKS trademark when he registered the disputed domain name, by virtue of being the Groupon account manager for the Complainant.

The Complainant contends that the Respondent registered the disputed domain name to disrupt the Complainant's business and/or to divert business intended for the Complainant to his own website. The Complainant points out that the Respondent's website competes with its own for travel agency business. The Complainant further submits that the disputed domain name has caused actual confusion with the Complainant's business and exhibits a number of emails and a forum posting evidencing that confusion.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Since the Complainant has no registered trademark rights, it must establish as a preliminary matter that it has obtained common law rights, in the nature of unregistered trademark rights, in the name or mark upon which it relies.

In this case, the Panel accepts the Complainant's (uncontradicted) evidence that it has traded since 2012 under the name and mark WEEKENDER BREAKS and that it has transacted a substantial level of public-facing business under that mark. The Panel accepts in the circumstances that the mark WEEKENDER BREAKS has become associated in the minds of the public with the Complainant and its travel agency services and that the Complainant has therefore obtained common law rights in that mark.

Further, as discussed in section 1.3 of [WIPO Overview 3.0](#): "The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier." The Panel finds in this case that the Respondent has clearly used the disputed domain name to target the Complainant's trademark and that this supports the Complainant's claim to have obtained unregistered trademark rights.

The Panel finds that the disputed domain name is identical to the Complainant's trademark WEEKENDER BREAKS and, therefore, that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel finds moreover that the Respondent registered and has used the disputed domain name to target the Complainant's trademark, which cannot give rise to rights or legitimate interests. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds that, by virtue of his position as the Groupon account manager for the Complainant, the Respondent was obviously aware of the Complainant's WEEKENDER BREAKS trademark when he registered the disputed domain name. The disputed domain name is identical to the Complainant's trademark and therefore inherently misleading, as inevitably suggesting that it is owned or operated by, or otherwise commercially affiliated with, the Complainant. The Complainant relies on the fact that, at some point after the Complainant asked the Respondent to transfer the disputed domain name to it in 2018, the Respondent chose to redirect the disputed domain name to the Complainant's own website. The Complainant submits that this is an admission by the Respondent that its registration was in bad faith; in effect this would amount to an attempt to hide his tracks and give the appearance of innocence or legitimacy. The Complainant also relies on the fact that the Respondent has offered no legitimate explanation for his choice of the disputed domain name. The Complainant contends that it is reasonable to assume that if the Respondent did have legitimate purposes in registering and using the disputed domain name he would have said so. In the circumstances, the Panel finds that the Respondent acted in bad faith.

The Respondent has used the disputed domain name, which is identical to the Complainant's trademark, to resolve to a website, operated by the organization "traveloffr", offering travel agency services which compete with those of the Complainant. The Panel therefore finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used 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 name <weekenderbreaks.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 2, 2024