

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. Domains By Proxy, LLC / Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2022-0987

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 Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <alvrbo.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 March 22, 2022. On March 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2022 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 March 24, 2022.

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 April 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on May 9, 2022. 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 part of Expedia, Inc., which 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. The Complainant's services are offered under the brand VRBO. The VRBO brand was started in 1995 by VRBO.com, LLC and was acquired by the Complainant in 2010. The VRBO brand is extensively advertised through many different channels and has won several travel and hospitality awards. The VRBO mark is registered in many jurisdictions including the United States, the European Union and China. These trademark registrations include United States Trade Mark Registration No. 2820989 registered on March 9, 2004 for goods and services in international classes 9 and 43. The Complainant's website is found at "www.vrbo.com".

The Respondent registered the disputed domain name on July 26, 2021. The disputed domain name resolves to a website with pay-per-click ("PPC") links to various third-party websites for competing vacation rental or related services.

Respondent

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

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's distinctive VRBO Mark, as it consists of the Complainant's exact VRBO mark. The addition of the abbreviation "al" at the head of the disputed domain name does not distinguish the disputed domain name from the Complainant's VRBO mark, as VRBO is clearly identifiable and the primary and dominant element of the disputed domain name.

The Complainant further contends that the disputed domain name is not, nor could it be contended to be, a legitimate name or nickname of the Respondent, nor is it in any other way identified with or related to any rights or legitimate interests of the Respondent. In addition, the Respondent cannot demonstrate or establish rights or legitimate interests in the disputed domain name. 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 that incorporates the exact VRBO mark. Furthermore, the Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain name. The Respondent has used, and is using, the disputed domain name solely for commercial gain, since the Respondent has attempted to sell the disputed domain name for profit and since the Respondent has used the disputed domain name to attract and redirect web traffic to a website that is full of links for services that directly compete with the Complainant's VRBO vacation rental service.

The Complainant finally contends that in light of the Respondent's registration of the disputed domain name that is confusingly similar to the Complainant's VRBO mark to attract and redirect web users to a click through revenue page offering links to services that compete with the Complainant's vacation rental services, and the Respondent's attempts to sell the disputed domain name at a price in excess of the Respondent's out of pocket expenses, there can be no doubt that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant also asserts that the Respondent is a known cybersquatter with

an established pattern of bad faith registration and use of domain names based on the trademarks of others, and that the Respondent has been found to have acted in bad faith in numerous prior UDRP cases.

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark because it contains the Complainant's registered trademark VRBO in its entirety with the addition of the two letters "al" as prefix. The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See Section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It follows from the information that is included in the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark in any way.

Further, given the circumstances of this case, the Panel is of the opinion that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this, and the way the Respondent has been and is using the disputed domain name (see below in Section 6.C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has 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 the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the extent of use and reputation of the Complainant's trademark VRBO, as well as the distinctive nature of the Complainant's mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name it chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

Also, the Respondent is using the disputed domain name actively for a PPC page that contained links to websites of third parties some of which appear to offer services of competitors of the Complainant. It is thus obvious to the Panel that the Respondent uses the disputed domain name in bad faith by intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. See section 3.5 of the [WIPO Overview 3.0](#). The fact that the disputed domain name is offered for sale at a price in excess of the holder's documented out-of-pocket costs directly related to the disputed domain name, and the fact that the named Respondent has been involved in several similar cases under the UDRP supports this finding, *cf.* section 3.1.2 of the [WIPO Overview 3.0](#).

Noting that the disputed domain name incorporates the Complainant's well-known trademark, that no response has been filed, that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, that the disputed domain name effectively prevents the Complainant from registering the identical domain name and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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 <alvrbo.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: May 31, 2022