

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. Steven Oneil
Case No. D2022-4642

1. The Parties

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

Respondent is Steven Oneil, United States.

2. The Domain Name and Registrar

The disputed domain name <vrbo-booking-request.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on December 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 6, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on January 11, 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

Complainant owns registrations worldwide for its VRBO trademark, including for example United States Reg. No. 76505701, registered March 9, 2004 in International Class 36, with a first use in commerce date of January 1, 1996.

The disputed domain name <vrbo-booking-request.com> was registered on May 16, 2022, and presently does not route to an active webpage. According to evidence in the Complaint, the disputed domain name previously routed to the Complainant's website.

5. Parties' Contentions

A. Complainant

Complainant avers that it was founded in 1995 and that its vacation property rental business operates in 190 countries worldwide.

Complainant avers that the disputed domain name, once registered, initially redirected Internet users to Complainant's website at the domain name <vrbo.com>. At some later point, Complainant avers, the disputed domain name routed to a webpage stating "Sorry we are down for maintenance. We'll be back soon."

The Complaint alleges that on August 5, 2022, Complainant's representative sent Respondent a demand letter to which Respondent apparently responded on August 17, 2022: "If vrbo wants the domain VRBO-BOOKING-REQUEST.COM is for sale at 50,000 \$, let me know if they accept the price." While Complainant avers that it wrote back to Respondent the same day, no further communications from Respondent were received.

Following these exchanges between the Parties, Complainant avers, Respondent once again configured the disputed domain name to redirect to Complainant's website. Complainant also submits evidence that the disputed domain name was configured via the establishment of mail exchange ("MX") records to support its usage for email services.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's VRBO trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain name.¹

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

¹Complainant provides several exhibits supporting each of the factual allegations above.

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's VRBO mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. See, e.g., *HUK-COBURG haftplicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#); *VAT Holding AG v. Vat.com*, WIPO Case No. [D2000-0607](#); and *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Omitting the ".com" TLD from the disputed domain name, the Panel notes that the entire VRBO mark is included in the disputed domain name, adding only hyphens and the words "booking" and "request". The Panel finds that the addition to Complainant's VRBO mark of these words and characters does not prevent a finding of confusing similarity. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar).

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark.

The Panel concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts the Complaint's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademark in the disputed domain name.

The Panel also accepts the Complainant's averment that Respondent is not commonly known by the disputed domain name.

Complainant has submitted credible evidence that the disputed domain name has at times routed Internet users to Complainant's webpage at the domain name <vrbo.com>. At other times, the disputed domain name has routed to an inactive webpage. Complainant also submitted credible evidence of Respondent's preparation to use the disputed domain name for email service without any authorization for the use of Complainant's VRBO trademark.

The Panel finds that Respondent lacks rights or legitimate interests in the disputed domain name, since Respondent's use of the disputed domain name both for redirection and in connection with an email server falsely suggests that Respondent is affiliated with Complainant, the trademark owner. [WIPO Overview 3.0](#), section 2.5 (a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner).

The evidence also shows that Respondent has sought from Complainant a large sum of money for transfer of the disputed domain name. This attempted commercial activity also supports the finding that Respondent lacks rights or legitimate interests. *Id.*, section 2.5.3.

In light of the evidence and allegations of the Complaint, the Panel finds that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and that Complainant establishes a *prima facie* case. Respondent has neither contested nor rebutted that *prima facie* case.

The Panel finds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of the Policy is established.

C. Registered and Used in Bad Faith

The Panel also agrees that the Complaint establishes that Respondent has registered and used the disputed domain in bad faith, as required under paragraph 4(a)(iii) of the Policy.

The Panel notes Complainant's distinctive VRBO trademark was registered long before the registration of the disputed domain name, and was already widely-known in the United States by the time of registration of the disputed domain name.

The Panel finds that a presumption of bad faith is created by Respondent's mere registration of a domain name which is confusingly similar to Complainant's widely-known VRBO trademark. [WIPO Overview 3.0](#), section 3.1.4.

Moreover, Respondent's redirection of the disputed domain name to Complainant's website and preparation of the disputed domain name for use with an email service is indicative of bad faith, underscoring Respondent's knowledge of and attempt to exploit Complainant's mark through the confusingly similar disputed domain name.

Finally, Complainant has provided credible evidence of Respondent's offer to transfer to Complainant the disputed domain name for USD 50,000. The fact that Respondent sought this payment, well in excess of any conceivable out-of-pocket costs, further supports a finding of bad faith under Policy paragraph 4(b)(i).²

The Panel finds, therefore, that the third element of paragraph 4(a) of the Policy is satisfied.

² Paragraph 4(b)(i) of the Policy provides that bad faith may be demonstrated by "circumstances indicating that [the respondent 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 respondent's] documented out-of-pocket costs directly related to the domain name [...]".

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 <vrbo-booking-request.com> be transferred to Complainant.

/Jeffrey D. Steinhard/t

Jeffrey D. Steinhardt

Sole Panelist

Date: January 25, 2023