

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. Karen Parr John Sarver
Case No. D2023-0868

1. The Parties

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

Respondent is Karen Parr John Sarver, United States.

2. The Domain Name and Registrar

The disputed domain name <vrbo.homes> is registered with Global Domains International, Inc. DBA DomainCostClub.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2023, 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 (DomainCostClub.com) and contact information in the Complaint.

The Center sent an email communication to Complainant on March 1, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 3, 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 Respondent of the Complaint, and the proceedings commenced on March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was set at March 23, 2023. Upon request from Respondent, the Center granted the automatic four calendar day extension for the Response under paragraph 5(b) of the Rules. Respondent,

which had on March 1, 2023 provided the Center and Complainant an initial response to the Complaint, filed its formal Response with the Center on March 27, 2023.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on April 4, 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, a subsidiary of Expedia, Inc. since 2015, operates a global online marketplace offering over 2 million bookable listings of vacation homes and apartments in over 190 countries. It is the proprietor of several registrations for its VRBO mark, including the following:

- United States Trademark Registration No. 2820989 for VRBO (word mark), registered on March 9, 2004 for services in class 36, claiming a date of first use of January 1, 1996;
- United States Trademark Registration No. 5681113 for VRBO (word mark), registered on February 19, 2019 for goods and services in class 9 (claiming a date of first use of June 16, 2017) and 43 (claiming a date of first use of January 1, 1996).

Complainant operates its primary business website at the domain name <vrbo.com>.

Respondent Karen Parr, based in Virginia, United States, operates a real estate business (Virginia Homes, Inc.) and a marketing and design company (Vibe LLC), which provides web design and other services for real estate professionals. Respondent's Vibe entity operates a website at the domain name <folio.homes> through which various domain names incorporating the generic top-level domain ("gTLD") .homes are offered for sale, including some with third-party marks such as <whirlpool.homes>. Respondent's website also features thumbnails that link to third-party websites at different domain names. For example, a thumbnail labeled <remax.homes> redirects users to a website at <remax.com>.

The disputed domain name was registered on November 25, 2021. The record reflects that it previously redirected Internet users to a website operated by Respondent at the domain name <folio.homes> on which real estate marketing services are offered. The record contains a cease-and-desist letter from Complainant to Respondent dated June 22, 2022. In a reply dated June 26, 2022, Respondent stated that it does not offer vacation rental services and was planning to use the disputed domain name for a future website subscription related to virtual reality and unrelated to Complainant's mark.

Respondent stated that it had added a disclaimer to its page at <folio.homes/vrbo-statement>, stating the following:

"vrbo.homes
All available domains can be reserved. Contact us below.
VIBE LLC has NO Affiliation to and is NOT endorsed or sponsored by
Expedia, HomeAway or VRBO.com"

Complainant restated its requests on August 23, 2022, and Respondent reiterated its refusal to cease using the domain name on August 24, 2022. The record contains evidence that the disputed domain name was listed for sale on a third-party website in February 2023. At the time of this Decision, the disputed domain name did not resolve to an active website. The disclaimer above remained visible at "folio.homes/vrbo-statement".

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Complainant states that its VRBO brand has been extensively promoted for nearly 25 years through advertising, on social media platforms, and through a mobile application. Complainant has received several awards for its services and its website receives an average of 40 to 57 million visitors each month. The VRBO mark has acquired a high degree of public recognition and distinctiveness.

Under the first element, Complainant states that the disputed domain name is identical to its distinctive VRBO mark, as it consists solely of this mark.

Under the second element, Complainant states that Respondent is not commonly known by the disputed domain name. There is no relationship between the Parties giving rise to any license, permission, or other right by which Respondent could own or use any domain name incorporating the VRBO mark. Respondent is using the disputed domain name solely for commercial gain to redirect to a website offering ".homes" domains for sale, including the disputed domain name. The disclaimer is confusing. The thumbnail images on Respondent's website do not clearly indicate the relationship of Respondent to those various domain names including third-party marks such as <ikon.homes> and <usaa.homes.> Respondent's statement of intention to use the disputed domain name for a future venture allegedly involving virtual reality does not establish rights or legitimate interests. Respondent has offered the disputed domain name for sale and has used it to redirect Internet users to its website. The use of the ".homes" gTLD is directly related to Complainant's business.

Under the third element, Complainant states that the disputed domain name completely incorporates its mark and was registered long after Complainant's rights in its VRBO mark were established. Respondent, a real estate professional, more than likely knew about and targeted Complainant. The disputed domain name uses the ".homes" extension, enhancing an association with Complainant.

The disputed domain name has been used to redirect Internet users to Respondent's website at <folio.homes>, where it was offered for sale. The disputed domain name has also been offered for sale through a domain name marketplace. The fact that, after Complainant sent a demand letter, Respondent redirected the disputed domain name to a sub-page and added a small disclaimer does not dispel Respondent's bad faith. After the demand letter, Respondent removed the disputed domain name from the domain names available for sale on its own website and offered the disputed domain name for sale through a third-party marketplace.

Complainant requests transfer of the disputed domain name.

B. Respondent

As noted above, Respondent filed an initial communication immediately following the filing of the initial Complaint, and its formal Response was filed following the filing of the Amended Complaint. The arguments in both communications are related, and may be summarized as follows:

Respondent states that "John Sarvar was added to account as Transfer on Death only (no ownership in domains or businesses".

Respondent denies the allegations. Respondent states that its Vibe LLC is a marketing and design business. The website <folio.homes> is a bulk landing page for thousands of ".homes" domain names to promote free awareness of the ".homes" gTLD. These domain names are not for sale. Customers may inquire about subscriptions. Respondent purchased a large portfolio of ".homes" domain names between 2017 and 2019 with plans to offer them to real estate agents with small budgets on a subscription basis.

Due to uncertainty when the “.homes” registry was offered for sale, the plans were delayed, and further delayed by Covid. Respondent has only sold five of these domain names and has refused over 100 offers on others. This business is in its startup research and development stage and is not advertised. Respondent is not motivated by money but by the wish to help people. Respondent’s office is not open to the public and Respondent has no employees.

The disputed domain name comprises 4 letters and may related to many different businesses. Respondent plans a business involving virtual reality in which the disputed domain name would be used in a design reflecting, alternately, “VR Brokers Open,” “VR Builders Open,” and “VR Buyers Open.” It has not and will not be used in bad faith. Two brands can share an acronym when used for different goods and services. Respondent has no intention of infringing Complainant’s mark.

Respondent is not in the travel or vacation rental industry and does not generate any income related to that industry. Respondent is not a competitor to Complainant and did not acquire the disputed domain name to sell, rent, or transfer to anyone. Respondent generates no income from the disputed domain name. The disputed domain name may only be found by typing it, and there is little awareness of the “.homes” gTLD.

While harassing Respondent, Complainant has failed to act against many actual trademark infringers online. In reference to the <usaa.homes> and <ikon.homes> domains, Respondent realized these domain names were registered in error and has let them expire. Complainant itself has engaged in bad faith by purchasing a Google keyword corresponding to the name of one of Respondent’s businesses.

6. Discussion and Findings

6.1 Procedural Matter - Identity of Respondent

The Panel notes that after the Notice of Registrant Information sent by the Center, Complainant provided an Amended Complaint naming Respondent as “Karen Parr and John Sarver.” The record does not contain much information about John Sarver, other than the name was used for the registration of the disputed domain name. The Panel accepts Respondent’s explanation for why John Sarver is listed as a second registrant. Accordingly, in this Decision, Karen Parr will be treated exclusively as Respondent.

6.2 Substantive Matters

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the VRBO mark through registration in the United States and other jurisdictions. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

In comparing Complainant's VRBO mark with the disputed domain name, the Panel finds that the disputed domain name is identical to the mark.

It is the well-established view of UDRP panels that a gTLD such as ".homes" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent's 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) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial 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.

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant to use its VRBO mark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent asserts two bases for her claims of rights and legitimate interests in the disputed domain name. First, Respondent states that she is planning to use the disputed domain name for a business involving virtual reality for the real estate industry using terms corresponding to the letters "vrbo". Second, Respondent states that she is not generating income from the disputed domain name, and that she has no intention of infringing Complainant's mark.

The Panel finds there is no evidentiary support for Respondent's statements regarding her alleged planned business, and therefore cannot make a finding of rights or legitimate business favorable to Respondent on that basis. See [WIPO Overview 3.0](#), section 2.2.

The composition of the disputed domain name being identical to Complainant's mark casts some serious doubts on Respondent's explanation. The fact that other domain names under the gTLD ".home" comprising third party trademarks are displayed on the website to which the disputed domain name redirects, with thumbnails that link to third-party websites at different domain names, throws light on Respondent's likely intention towards the disputed domain name.

The Panel further finds there is no evidence that would support a finding of legitimate fair use of the disputed domain name. The Panel does not doubt that the VRBO mark has, through decades of extensive use, acquired distinctiveness. There is no evidence that Respondent is commonly known by the disputed domain name. The nature of the domain name, which is identical to Complainant's mark, carries a high risk of implied affiliation. The Panel notes that the ".homes" TLD further emphasizes a connection with Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that Respondent's statements regarding her lack of income from the disputed domain name are not supported by any evidence, and are contradicted by the undisputed evidence that the disputed domain name was used to redirect Internet users to a website through which fee-based services were offered. Respondent's explanation on why this offer for sale occurred is not sufficient, given the circumstances. The evidence demonstrates that the disputed domain name was used to attract Internet users to Respondent's website. Given the proximity of the disputed domain name to Complainant's business, the Panel finds that Respondent's use of the disputed domain name is incompatible with a finding of legitimate fair use, and cannot give rise to rights or legitimate interests under the Policy. See [WIPO Overview 3.0](#), section 2.5.3.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

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

- (i) circumstances indicating that the respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed 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 respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on the respondent's website or location. (Policy, paragraph 4(b)).

There is no dispute that Complainant has trademark rights in the VRBO mark, and that the disputed domain name is identical to it.

The first issue to address is whether Complainant has established that Respondent registered the disputed domain name in bad faith. Complainant states that Respondent, a real estate professional, more than likely knew about and targeted Complainant's well-established mark. Respondent states its selection of the disputed domain name was based on its identity with the letters corresponding to "Virtual Reality" and, in turn, "Brokers Open", "Builders Open", and "Buyer's Open", referring to ways of showing real estate properties. According to Respondent, these four letters could correspond to many businesses. The disputed domain name was registered for the purpose of raising awareness of the ".homes" gTLD.

The Panel finds that the evidence supports a finding that the disputed domain name was registered in bad faith. It is not disputed that Complainant's registered rights in its VRBO mark date to 2004, and that the mark has been used by Complainant in connection with vacation rentals since 1996, predating the registration of the disputed domain name by decades. Complainant has brought forth sufficient evidence that the VRBO mark has acquired distinctiveness at least in respect of goods and services related to vacation rentals. The Panel finds that this industry is proximate to Respondent's real-estate and real-estate marketing businesses.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4. Further, Respondent does not claim she was unaware of Complainant's mark. The Panel finds that the use of the ".homes" extension with a Second-Level Domain identical to Complainant's mark is additional evidence that the disputed domain name targeted Complainant.

The second issue is whether Complainant has established that Respondent used the disputed domain name in bad faith. Complainant states that the disputed domain name was used to redirect Internet users to Respondent's website at <folio.homes>, where it was offered for sale before being transferred to a third-party domain name marketplace. After Complainant sent a demand letter, Respondent redirected the disputed domain name to a sub-page and added a small disclaimer. The Panel notes that the record contains evidence supporting these contentions.

Respondent states that her <.homes> domain-name portfolio is not for sale and only a few have been sold, and that the website in question is intended to promote the <.homes> top-level domain and provide lower-cost access to domain names for real estate professionals. Respondent denies that the disputed domain name is for sale, and states that it was placed on the third-party marketplace in error. Respondent notes the use of a disclaimer addressing Complainant's concerns and her response to having registered some domains in error.

The Panel finds that Respondent has not rebutted Complainant's contentions. The evidence clearly demonstrates that the disputed domain name redirected Internet users to Respondent's website and was offered for sale by Respondent. Respondent's own statements and evidence support a finding that, by registering, using, and offering for sale multiple domain names evidently corresponding to third-party trademarks (presumably without authorization), Respondent has engaged in a pattern of bad-faith conduct. The Panel does not find any support in the record for Respondent's claim that her intention was to promote the top-level domain <.homes>. See [WIPO Overview 3.0](#), section 3.1.2.

The Panel finds that, in light of its finding that Respondent has no right or legitimate interest in the disputed domain name, the use of the disclaimer in these circumstances does not cure bad faith. See [WIPO Overview 3.0](#), section 3.7.

The Panel notes that Respondent did not attempt to conceal her identity and was forthcoming with a detailed response to the Complaint. Nevertheless, Respondent has provided no credible evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible.

Accordingly, the Panel finds that Complainant has established the third element under paragraph 4(a) 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 name <vrbo.homes> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: April 18, 2023