

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. Nanci Nette

Case No. D2023-1561

1. The Parties

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

Respondent is Nanci Nette, United States.

2. The Domain Name and Registrar

The disputed domain name <homeawayprod.com> is registered with Goto Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 16, 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 (“Redacted for Privacy”) and contact information in the Complaint. The Center sent an email communication to Complainant on April 17, 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 April 18, 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 April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 11, 2023.

The Center appointed Phillip V. Marano as the sole panelist in this matter on May 24, 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 is a global online marketplace for the vacation rental industry representing over two million bookable listings in over 190 countries worldwide. Complainant offers its services through its official <homeaway.com> domain name, which redirects to an affiliated <vrbo.com> and website. Complainant owns valid and subsisting registrations for the HOMEAWAY trademark in numerous regions and countries, including the trademark for HOMEAWAY (U.S. Reg. No. 3,596,177) in the United States, registered on March 24, 2009 with the earliest priority dating back to September 10, 2008.

Respondent registered the disputed domain name on July 28, 2022. Prior to that time, Complainant had been the owner of the disputed domain name, but Complainant's registration inadvertently lapsed. At the time this Complaint was filed, the disputed domain name resolved to variable content including *inter alia* (i) an alleged security services page advising visitors that "Access to this PC has been disabled! Please contact support", (ii) a windows firewall page advising visitors that access is blocked due to a "Pornographic_Spyware_Alert", and (iii) a pay-per-click page provided by Sedo Domain Parking with hyperlinks advertising "Home Away Rentals" and "House Rentals".

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant asserts ownership of the HOMEAWAY trademark and has adduced evidence of trademark registrations in numerous regions and countries including the United States, with priority dating back to September 10, 2008. The disputed domain name is confusingly similar to Complainant's HOMEAWAY trademark, according to Complainant, because it consists of Complainant's exact HOMEAWAY trademark and the addition of "prod" does not distinguish the disputed domain name, as Complainant's HOMEAWAY trademark is clearly still identifiable and the primary and dominant element.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the well-known nature of Complainant's HOMEAWAY trademark; the lack of any authorization, license or permission between Complainant and Respondent; the lack of any evidence that Respondent is commonly known by the disputed domain name; and Respondent's use of the disputed domain name in connection with various purposes such as web pages that tell users their computer is locked and to call a helpline, a page asking consumers to click to allow potential downloads, and redirects to third party websites for travel and vacation rental related links.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the well-known nature of Complainant's HOMEAWAY trademark, as demonstrated by numerous panel determinations under the Policy; Respondent's significant history of having acted in bad faith under over 50 panel determinations under the Policy; and Respondent's nefarious use of the disputed domain name to (i) tell users their computer is locked or has been infected with pornographic spyware and to call a helpline, (ii) ask users to click to allow potential downloads, (iii) redirect to third party websites or to click through pages full of travel and vacation rental related links.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "prod", may bear on assessment of the second and third elements, the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8; see also *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("The addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of Respondent. As such, where a 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 domain name. If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

Before any notice to Respondent of the dispute, Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. In particular, service of pay-per-click advertisements through the disputed domain name attempts to trade off the goodwill of Complainant and accordingly cannot constitute any *bona fide* offering of goods or services using the disputed domain name. [WIPO Overview 3.0](#), section 2.9 (Unless "genuinely related to the dictionary meaning" of the disputed domain, "[pay-per-click] links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of Complainant's mark or otherwise mislead Internet users.") See, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#) (use of a domain name in connection with a web page that "only contains advertisements as sponsored links" is "for presumed commercial gain"); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#) ("a parking website containing sponsored links... cannot be considered either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant's goodwill by misleading Internet users to its website"); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (a disputed domain name "pointing to a website featuring PPC [pay-per-click] links... could not be construed as a *bona fide* or legitimate noncommercial or fair use"). In this Complaint, Respondent has configured the disputed domain name to resolve to, among other things, a pay-per-click parking page advertising links in competition with the services offered by Complainant.

Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name. Indeed, based on the undisputed facts and circumstances in the record before it, the Panel finds that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. This is especially the case where a disputed domain name is so obviously connected with a complainant and its products, the very use, let alone attempts to monetize, by a registrant with no connection to a complainant suggests opportunistic bad faith. The Panel concludes from the record that Respondent had Complainant's HOMEAWAY trademark in mind when registering the disputed domain name, and that Respondent most likely registered the disputed domain name in order to exploit and profit from Complainant's trademark rights. Indeed, a respondent who knowingly adopted a third party's well-known mark as a domain name cannot claim the benefit of Paragraph 4(c)(i) of the Policy to establish rights to the domain name based on its mere use of the domain name to offer goods or services prior to the notice of a dispute. *Scania CV AB v. Leif Westlye*, WIPO Case No. [D2000-0169](#); see also *Drexel University v. David Brouda*, WIPO Case No. [D2001-0067](#) (rights or legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the complainant).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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

The Panel considers that the record of this case reflects that:

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, and Respondent has engaged in a pattern of such conduct. Paragraph 4(b)(ii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.2.

Indeed, this Complaint presents a quintessential example where Respondent has engaged in a pattern of bad faith registration and use within paragraph 4(b)(ii) of the Policy. [WIPO Overview 3.0](#), section 3.1.2. (“This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner.”) Complainant has cited over 50 cases where Respondent was found to have registered and used domain names in bad faith, all of which resulted in decisions against Respondent. These cases demonstrate that Respondent has repeatedly targeted in bad faith well-known trademarks and many other brands. See e.g. *AXA SA v. Nanci Nette, Name Management Group*, WIPO Case No. [D2022-4885](#); *Qustodio Technologies S.L.U. v. Nanci Nette, Name Management Group*, WIPO Case No. [D2022-4851](#); *Air India Limited and Air India Express Limited v. Nanci Nette, Name Management Group*, WIPO Case No. [D2022-5020](#); *Majid Al Futtaim Properties LLC v. Nanci Nette*, WIPO Case No. [D2022-4104](#); *Itron, Inc. v. Super Privacy Service LTD c/o Dynadot / Nanci Nette, Name Management Group*, WIPO Case No. [D2022-1920](#); *Fenix International Limited v. Privacy Services Provided by Withheld for Privacy ehf / Nanci Nette*, WIPO Case No. [D2022-1659](#); *Khadi and Village Industries Commission v. Domains By Proxy, LLC / Nanci Nette*, WIPO Case No. [D2022-1200](#); *Volvo Trademark Holding Aktiebolag v. Nanci Nette*, WIPO Case No. [D2022-0299](#); *Google LLC v. Nanci Nette / Name Management Group*, FORUM Claim No.: FA2112001977287; *Luna Management Sam v. Nanci Nette*, WIPO Case No. [D2021-1579](#); *Montage Hotels & Resorts, LLC v. Nanci Nette*, WIPO Case No. [D2020-3145](#); *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Nanci Nette*, WIPO Case No. [D2019-2545](#), and many others. These numerous adverse UDRP decisions against Respondent shows that Respondents’ *modus operandi* is to: hide its true identity through anonymous domain name registration services; register domain names incorporating well-known trademarks of others; trade-off the goodwill of those marks for commercial gain by redirecting Internet traffic to pay-per-click advertisements or to third-party websites; and refuse to participate when the rightful trademark owners file Complaints pursuant to the UDRP.

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s web site or location or of a product or service on Respondent’s web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4. Third-party generated material, such as parking websites with pay-per-click links, cannot be disclaimed by Respondent to prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5 (“A respondent cannot disclaim responsibility for content appearing on the website associated with its domain name” regardless of whether “such links [are] generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that respondent itself may not have directly profited....”). See *SAP SE v. Domains by Proxy, LLC / Kamal Karmakar*, WIPO Case No. [D2016-2497](#) (“It is well established that where a domain name is used to generate revenue in respect of ‘click through’ traffic, and that traffic has been attracted because of the name’s association with the Complainant, such use amounts to use in bad faith ... Revenue will be generated by such visitors clicking on the provided links and it does not matter whether that revenue accrues to the Respondents or the operator of the parking site”) (internal citations omitted). Here, Respondent has misappropriated Complainant’s HOMEAWAY trademark in the disputed domain name and configured it to resolve to a website featuring pay-per-click advertisements for competing services.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In particular, the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (particularly where no conceivable good faith use could be made). [WIPO Overview 3.0](#), Section 3.1.4. Complainant has adduced evidence of recognition of the HOMEAWAY trademark and cited several UDRP panel determinations in agreement that Complainant's HOMEAWAY trademark is considered to be "well-known" for purposes of the Policy. See e.g., *Homeaway.com Inc. v. Hildegard Gruener*, WIPO Case No. [D2022-2237](#) (finding as inconceivable the registration of domain names featuring the well-known marks [(HOMEAWAY and VRBO)] belonging to the same complainant); *HomeAway.com, Inc. v. Jacques Cartier*, WIPO Case No. [D2022-5000](#) ("the reputation of the Complainant's trademark HOMEAWAY in the field of travels is clearly established"). As such, the Panel likewise finds it is unconceivable that Respondent could have registered the disputed domain name without knowledge of Complainant's HOMEAWAY trademark, without any intention to benefit from confusion with Complainant's HOMEAWAY trademark.

Finally, panels have long recognized that unauthorized registration of domain names by respondents, following a complainant's prior inadvertent expiry, may support an inference of bad faith. See e.g., *Lifetime Assistance, Inc. v. Domain Asset Holdings, LLC*, WIPO Case No. [D2011-2137](#) ("Respondent registered the Domain Name virtually immediately after Complainant's registration lapsed, while any trademark or Internet based search would have easily disclosed Complainant's trademark rights and long-established use...."); *Sylvia Browne Corporation v. Younghee Kim / SYLVIABROWNE HYPNOSIS*, WIPO Case No. [D2007-1715](#) ("the disputed domain name was previously owned and used by the Complainant immediately prior to being registered by the Respondent. This suggests to the Panel that the Respondent's registration was an opportunistic action resulting from an inadvertent lapse on the part of the Complainant, a circumstance that in and of itself smacks of bad faith"); *Commission for Art Recovery, Inc. v. Alexandr Zaharov*, WIPO Case No. [D2008-1591](#) ("[t]he actions of the Respondent in acquiring the disputed domain name after it had lapsed and after it had been used by the Complainant for 7 years was clearly an opportunistic acquisition"). Here, Complainant has confirmed that when the disputed domain name inadvertently expired, it was re-registered by Respondent.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <homeawayprod.com>, be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: June 1, 2023