

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc., Stayz Pty Limited v. Richard Muller
Case No. D2023-4398

1. The Parties

The Complainant is HomeAway.com, Inc., Stayz Pty Limited, United States of America, represented by Kilpatrick Townsend & Stockton LLP, United States of America.

The Respondent is Richard Muller, France.

2. The Domain Name and Registrar

The disputed domain name <stayz-vrbo.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2023. On October 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 / PRIVACY SERVICE PROVIDED BY WITHHELD BY PRIVACY EHF) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 26, 2023, 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 October 27, 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 the Respondent of the Complaint, and the proceedings commenced on November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on December 5, 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

The Complainants are HomeAway.com Inc. and its subsidiary Stayz Pty Limited, collectively “the Complainant”.

The Complainant is the record owner, itself or by assignment from its predecessors-in-interest, of the VRBO and STAYZ marks. The Complainant VRBO’s predecessors-in-interest include Vrbo.com, LLC and Vrbo.com, Inc. Both companies were acquired by the Complainant on December 31, 2010.

The Complainant and its predecessors have been offering rental services under the VRBO mark for nearly 25 years.

The Complainant is owned by Expedia Inc. one the world’s largest travel companies. Expedia’s travel brands, including VRBO and STAYZ, among others, offer travelers a comprehensive selection of travel options.

Expedia acquired the Complainant and all of its brands, including VRBO in November 2015 and expanded into the fast-growing USD 100 billion alternative accommodation market.

The Complainant owns many trademark and service mark registrations for VRBO and STAYZ in several jurisdictions around the world, including the following.

- United States of America Trademark Registration No. 5681113 VRBO, registered on February 19, 2019, in classes 9 and 43;
- United States of America Trademark Registration No. 2820989 VRBO, registered on March 9, 2004, in class 36;
- European Union Trade Mark Registration No. 015778848VRBO, registered on March 3, 2017, in classes 9, 36, and 43;
- Canadian Trademark Registration No. 1586704 VRBO, registered on November 10, 2014, in class 36;
- Australian Trademark Registration No. 1141191 STAYZ, registered on October 16, 2009, in classes 16, 35, 36, 39, and 43.

The Complainant’s <vrbo.com> website has received an estimate average of over 40 to 57 million monthly visits in the past year.

The Complainant operates a leading vacation rental marketplace in Australia under the name and mark STAYZ through the website <stayz.com.au> since 2001. The company and brand were acquired by HomeAway in 2013, which then became a part of the Complainant’s Expedia corporate group in 2015, when HomeAway was acquired by Expedia.

The disputed domain name was registered on September 1, 2023, and is used as a redirect to the Complainant’s website <stayz.com.au>.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that the Respondent is likely monetizing the disputed domain name for affiliate income offered by the Complainant and its parent Expedia by passing the redirect through multiple intermediate services to hide the use of the disputed domain name.

Since the Complainant has not authorized the registration or use of the disputed domain name, the Respondent could at any time use the disputed domain name for another purpose, including a nefarious scheme.

Given the Respondent's actions, there can be no doubt that the Respondent is acting in bad faith to profit from the goodwill associated with the Complainant's VRBO and STAYZ marks.

Finally, the Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

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

Consolidation

The Panel agrees that the naming of the parent and its subsidiary as Complainant is perfectly acceptable in this proceeding in which the Respondent is using the disputed domain name which is confusingly similar to trademarks in which the parent company and its subsidiary have demonstrated common legal interests due to their affiliate relationship and therefore share a common grievance against the Respondent. Section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")

The Panel finds that the consolidation of multiple complainants in this case is both equitable and efficient.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement.

As set forth in section 1.7 of [WIPO Overview 3.0](#) the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's STAYZ and VRBO trademarks.

The disputed domain name <stayz-vrbo.com> incorporates the Complainant's trademarks STAYZ and VRBO in their entirety separated by a hyphen, which does not prevent a finding of confusing similarity.

The “.com” generic Top-Level Domain (“gTLD”) is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademarks STAYZ and VRBO in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

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

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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 is satisfied that the Respondent must have been aware of the Complainant’s trademarks STAYS and VRBO mentioned in section 4 above (Factual Background) when it registered the disputed domain name on September 1, 2023. By that time, the Complainant had for many years ago registered and intensely used the distinctive trademarks STAYS and VRBO.

By registering the disputed domain name including the Complainant’s trademarks STAYS and VRBO in their entirety separated by a hyphen the Respondent was targeting the Complainant and its business with the purpose of confusing Internet users and lead them to think that the relevant website belongs to or is endorsed by the Complainant with the intention to capitalize on the fame of the Complainant’s trademarks for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name, the nature of the disputed domain name, the passing-off of the Complainant, the redirection of the disputed domain name to the Complainant’s website, and the use of a privacy service, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <stayz-vrbo.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: December 18, 2023