

## **ADMINISTRATIVE PANEL DECISION**

Homeaway.com, Inc. v. Hildegard Gruener  
Case No. D2023-4906

### **1. The Parties**

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

The Respondent is Hildegard Gruener, Austria.

### **2. The Domain Name and Registrar**

The disputed domain name <vrbo-homeaway.com> (the “Domain Name”) 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 November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 27, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 28, 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 December 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 28, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on January 11, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is owned by Expedia, Inc., one of the world's largest travel companies. Expedia is known around the world and has been recognized by a previous panel as a "well-publicized Internet travel company", *Expedia, Inc. v. Alvaro Collazo*, WIPO Case No. [D2003-0716](#). Expedia acquired the Complainant and its brands, including VRBO, in November 2015. The Complainant 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.

For nearly twenty-five years, the Complainant and its predecessors have continuously advertised and offered services and products under the VRBO name and mark. The Complainant has rights in trademark registrations for VRBO and HOMEAWAY in numerous jurisdictions around the world, including in the European Union where the Respondent is located, for example, European Union Trade mark registration number 015778848 for VRBO (registered on March 3, 2017), US trademark registration number 5681113 for VRBO (registered on February 19, 2019), and US trademark registration number 3596177 for HOMEAWAY (registered on March 24, 2009). The Complainant's website at "www.vrbo.com" receives an estimated average of 40 to 57 million monthly visits.

The Domain Name was registered on February 22, 2022. The Complainant documents that the Domain Name has resolved to a website that promotes vacation rental, using copies of the Complainant's trademarks and logos, including pay-per-click popup windows. At the time of drafting the Decision, the Domain Name resolved to a warning page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant provides evidence of trademark registrations and argues that its trademarks VRBO and HOMEAWAY are distinctive and well-known. As the Domain Name reproduces the Complainant's trademarks, the Domain Name is confusingly similar to trademarks in which the Complainant has rights.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant has not authorized the Respondent to use its trademarks in any way. The 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. The Respondent has not made any demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services. The Complainant points to that the Respondent has used the Domain Name for websites that offers vacation services some in direct competition with the Complainant.

The Complainant argues that the Domain Name was registered and is being used in bad faith as the Respondent must have had knowledge of the Complainant's prior rights when the Respondent registered the Domain Name. The Respondent's use of the Domain Name must be described as an intentional attempt to attract Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark. Lastly, the Respondent's bad faith is also confirmed by the fact that the Respondent has a pattern of registering and using domain names based on the trademarks of others in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The Complainant has established that it has rights in the trademarks VRBO and HOMEAWAY. The Domain Name incorporates the Complainant's trademarks in its entirety, with a hyphen in between. The addition of a hyphen does not prevent a finding of confusing similarity. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the Domain Name is confusingly similar to trademarks in which the Complainant has rights. The first element of paragraph 4(a) the Policy has been established.

### 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. While 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 often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name. The composition of the Domain Name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. There is no evidence of the 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. The Respondent's use, as described above, is evidence of bad faith.

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 composition and use of the Domain Name prove that the Respondent was aware of the Complainant and its prior rights when the Respondent registered the Domain Name. The Respondent has failed to provide any evidence of actual or contemplated good faith use of the Domain Name. Moreover, the Respondent appears to be engaged in a pattern of bad faith registration and use of domain names targeting the travel and hotels industry, with registrations based on the trademarks of others in bad faith. See, for example: *Trivago N.V. v. Hildegard Gruener*, WIPO Case No. [D2019-3095](#); *Skyscanner Limited v. Hildegard Gruener*, WIPO Case No. [D2018-2008](#).

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. 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 the Domain Name <vrbo-homeaway.com> transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: January 18, 2024