

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. gterg dfgedqw, bfgdfd
Case No. D2023-5055

1. The Parties

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

The Respondent is gterg dfgedqw, bfgdfd, China.

2. The Domain Names and Registrar

The Disputed Domain Names <travelvrbo-ap.com>, <travelvrbo-org.com>, <travelvrbo-vip.com>, <travelvrbo-wtt.com>, <vrboclick.com>, <vrboexpert-ava.com>, <vrbolife-ava.com>, <vrboninja-ava.com>, <vrbofotos-ava.com>, <vrbo rentals-ava.com>, <vrbosocial-ava.com>, <vrbowor-app.com>, and <vrboworld-app.com> (the “Disputed Domain Names”) are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On December 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Redacted for Privacy, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 12, 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 December 12, 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

The Center appointed Michael D. Cover as the sole panelist in this matter on January 17, 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is owned by Expedia, Inc. Expedia, Inc is one of the world's largest travel companies and its travel brands include EXPEDIA.COM and others, including VRBO. Expedia, Inc. acquired the Complainant and all of the Complainant's brands, including VRBO, in November 2015 and expanded into the fast-growing USD100 billion alternative accommodations market. The Complainant is a leader in this market and has made significant investments in marketing in its brands, as well as in product and technology.

VRBO.com LLC was founded in 1995 and later became VRBO.com, Inc. It was acquired by the Complainant on December 31, 2010. For nearly 25 years, property rental services have been offered under the VRBO trademark by the Complainant and its predecessors in business. The rental services provided under the VRBO trademark not just homes but also apartments, condominiums, recreational vehicles, boats, yachts, cabins, cottages, estates, mansions and yurts in the United States, Canada, Europe, and other destinations around the world.

The Complainant's service constitutes a global 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. The Complainant's vacation rental websites include <vrbo.com> in the United States and throughout the world.

The Complainant is the proprietor of the VRBO trademark, which is registered in the United States, as exhibited at Exhibit K to the Complainant. The VRBO trademark is also registered in numerous other jurisdictions around the world, including China, the EU and Canada, as set out at Exhibit L to the Complaint.

The trademark registrations of the Complainant include the following:

| | | | | |
|------|--------|---------------|-------------------|-------------------|
| VRBO | EUIPO | No. 015778848 | Classes 9, 36, 43 | March 3, 2017 |
| VRBO | Canada | No. 1586704 | Class 36 | November 10, 2014 |
| VRBO | China | No. 37270974 | Classes 43 | December 7, 2019 |
| VRBO | China | No. 33372168 | Classes 43 | May 14, 2019 |

Certain trademarks date back to 2014.

The Complainant operates its website at "www.vrbo.com", which receives an estimated average of over 40-57 million monthly visits.

The Disputed Domain Names were registered on November 3, 2023 and November 5, 2023, through the same registrar, Name.com, Inc.

The Disputed Domain Names have all been used with similar login pages similar to those of the Complainant's VRBO service, as set out at Exhibit N to the Complaint, and use the same name servers, as set out at Exhibit A to the Complaint.

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 Names.

Identical or Confusingly Similar

The Complainant submits that the Disputed Domain Names are confusingly similar to the Complainant's distinctive VRBO mark, as they fully incorporate the Complainant's exact VRBO mark. The Complainant cites in support *PepsiCo, Inc v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)* WIPO Case No. [D2003-0696](#) ("incorporating a trademark in its entirety can be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark"). The Complainant also references [WIPO Overview 3.0](#), Section 1.7.

The Complainant continues that the Respondent's use of common words, such as "click", "travel", "rentals", "photos" and the like in the Disputed Domain Names does not distinguish the Disputed Domain Names from the Complainant's VRBO trademarks, as VRBO is clearly identifiable and the primary and dominant element of the Disputed Domain Names and cites various previous Panel Decisions, including *Experian Information Solutions =, Inc. v. Credit Research, Inc.* WIPO Case No. [D2002-0095](#). The Complainant submits that, given the Complainant's longstanding use of VRBO, it is not feasible to believe that the Respondent was unaware of the VRBO, particularly in view of the Respondent's registration of multiple domain names based on the VRBO trademark and their use to impersonate the Complainant, as the Complainant puts it.

The Complainant concludes that, given the long use over two decades and renown of the Complainant's VRBO trademark, relevant consumers who encounter the Respondent's Disputed Domain Names or receive email using the Disputed Domain Names are likely to be misdirected and diverted to the Respondent's website, causing such Internet users to believe mistakenly that the Respondent's Disputed Domain Names and website are related to, authorized by or affiliated with the Complainant and its services, thereby creating a likelihood of confusion. The Complainant therefore concludes that the Disputed Domain Names are confusingly similar to the Complainant's VRBO trademark.

Rights or Legitimate Interests

The Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Names. The Complainant states that the Disputed Domain Names are not, nor could they be contended to be a legitimate name or nick name of the Respondent and that there is no evidence suggesting that the Respondent is commonly known by the Disputed Domain Names. The Complainant continues that there is no relationship between the Complainant and the Respondent giving rise to any license, permission or other right by which the Respondent could own or use any domain name incorporating the exact VRBO trademark and that no consent has been given to the Respondent by the Complainant.

The Respondent states that the Respondent is neither using the Disputed Domain Names in connection with a bona fide offering of goods or services nor making a legitimate non-commercial or fair use of the Disputed Domain Names. The Complainant submits that the Respondent has used and is using the Disputed Domain Names as part of a fraudulent scheme to impersonate the Complainant in order to trick unsuspecting consumers into providing login or other personal information for the financial or other benefit of the Respondent. The Complainant concludes that the Respondent cannot demonstrate any rights or legitimate interests in the Disputed Domain Names.

Registered or Used in Bad Faith

The Complainant submits that the Respondent has registered and is using the Disputed Domain Names in bad faith for commercial gain and to benefit from the goodwill and notoriety associated with the Complainant's VRBO trademark. The Complainant states that the Respondent's bad faith registration of the Disputed Domain Names is established by the fact that the thirteen Disputed Domain Names completely incorporate the Complainant's exact VRBO trademark were established long after the Complainant's rights in its VRBO trademark were established and the Complainant's services became well-known. The Complainant continues that the Respondent's bad faith is also illustrated by the fact that Internet users will mistakenly believe that the Disputed Domain Names are associated with endorsed or sponsored by the Complainant.

The Complainant concludes that, based on all the above, as the Complainant puts it, it is evident that the Complainant has met the requirements of the Policy by demonstrating not only the Complainant's own legitimate interest in its VRBO trademark, as evidenced by its trademark and extensive use of the trademark for over 20 years, but also that the Respondent has no lawful right or interest in the Disputed Domain Name and that the Respondent's registration and use of the Disputed Domain Names to impersonate the Complainant for a fraudulent scheme are thus in violation of the Complainant's prior established trademark rights.

The Remedy Requested by the Complainant

The Complainant believes that it is entitled to the remedy it requests. Accordingly, the Complainant requests that the Panel issue a Decision that the Disputed Domain Names be immediately transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

The Obligations of the Complainant

The Complainant must establish on the balance of probabilities that the Disputed Domain Names are identical or confusingly similar to a trademark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Names; and that the Disputed Domain Names have been registered and are being used in bad faith.

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 the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark VRBO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, “click”, “expert”, “world”, “travel” and the like may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The addition of the generic Top Level Domain (gTLD) “.com” does not prevent a finding of confusing similarity, as the addition of the gTLD is a technical requirement of registration [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that 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 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 Names. 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 Names such as those enumerated in the Policy or otherwise.

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.

It is a reasonable inference that the Respondent knew of the Complainant’s business and company, well-known trademark VRBO and reputation at the time of the registration of the Disputed Domain Names, particularly noting the Respondent’s use of the Complainant’s trademark has been in connection with what the Complainant has described as and the Panel finds are similar or nearly similar fake login pages for the Complainant’s VRBO service.

Panels have held that the use of a domain name for illegal activity, in this case seemingly phishing via a false login page, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the Disputed Domain Names constitutes bad faith under the Policy.

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

7. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Names <travelvrbo-ap.com>, <travelvrbo-org.com>, <travelvrbo-vip.com>, <travelvrbo-wtt.com>, <vrboclick.com>, <vrboexpert-ava.com>, <vrbolife-ava.com>, <vrboninja-ava.com>, <vrbofotos-ava.com>, <vrbo rentals-ava.com>, <vrbosocial-ava.com>, <vrbowor-app.com>, and <vrboworld-app.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: February 9, 2024