

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. xiao fang bin
Case No. D2023-5074

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 xiao fang bin, China.

2. The Domain Names and Registrar

The disputed domain names <vrboapp.com>, <vrboapp-us.com>, <vrboglobal.com>, <vrboglobal-us.com>, <vrbogroup.com>, <vrbojob.com>, <vrbojob-us.com>, and <vrboplus.com> are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2023. On the following day, 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 that differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 in English on December 7, 2023.

On December 7, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On the same day, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 in English and in Chinese the Respondent of the Complaint, and the proceedings commenced on December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 22, 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 operates a global online marketplace for the vacation rental industry. The Complainant owns trademark registrations in multiple jurisdictions, including the following:

- United States trademark registration number 2820989 for VRBO, registered on March 9, 2004, specifying vacation real estate listing services and providing such services via a global computer network, in class 36; and
- United States trademark registration number 5681113 for VRBO, registered on February 19, 2019, specifying goods and services in classes 9 and 43; and
- Chinese trademark registrations numbers 33372166, 33372167, and 33372168, all for VRBO, all registered on May 14, 2019, specifying goods and services in classes 9, 36, and 43, respectively.

The above trademark registrations are current. The Complainant uses the domain name <vrbo.com> in connection with a website that offers bookable listings of vacation rental homes and apartments in the United States and abroad. The website has operated under the Vrbo brand since 1995, and it has prominently displayed "Vrbo" in a fancy script (the "Vrbo logo") since 2019. According to web analytic data presented by the Complainant, its website received between 52.9 and 40.6 million visits per month from July to September 2023. The Complainant also uses its VRBO mark on its social media accounts.

The Respondent is an individual based in China.

The disputed domain names <vrboapp.com>, <vrboglobal.com>, <vrbogroup.com>, <vrbojob.com>, and <vrboplus.com> were registered on November 13, 2023. The disputed domain names <vrboapp-us.com>, <vrboglobal-us.com>, and <vrbojob-us.com> were registered on November 16, 2023. All the disputed domain names resolve to a login page that displays the Vrbo logo and invites Internet users to input their username and password. After an Internet user either logs in or closes the login page, they are taken to a webpage titled "Hi please login" above the tagline "Book hotels and start earning". The webpage displays various hotel brands and photographs together with different budget tiers that require a user to input their Vrbo account information.

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 disputed domain names are all confusingly similar to its VRBO mark. The Respondent has no rights or legitimate interests in respect of the disputed domain names. 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 mark. The Respondent 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 Respondent has knowingly 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 mark.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the websites associated with the disputed domain names are entirely in English, the disputed domain names all consist of an English language mark with English common words or abbreviations, and the Respondent is likely proficient in English, whereas requiring the Complainant to proceed in Chinese would be burdensome and unduly delay the proceeding.

Despite the Center having sent an email regarding the language of the proceeding and the Notification of Complaint in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in participating otherwise in this proceeding.

In exercising its discretion to use a language other than that of the Registration Agreements, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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 has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant.

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 names. See [WIPO Overview 3.0](#), section 1.7.

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

The entirety of the VRBO mark is reproduced within the disputed domain names. Although the addition of other terms here (variously, "app", "global", "group", "job", or "plus" and, in three cases, "-us") 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 VRBO mark for the purposes of the Policy. As a standard requirement of domain name registration, the addition of a generic Top-Level Domain ("gTLD") extension (".com") may be disregarded in the assessment of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.

Therefore, 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 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. See [WIPO Overview 3.0](#), section 2.1.

All the disputed domain names resolve to a login page that prominently displays the Complainant's Vrbo logo on a website that offers accommodation, which is the same type of service offered by the Complainant. The website, including the login page, gives the impression that it is operated by the Complainant. However, the Complainant submits that there is no relationship between the Respondent and itself giving rise to any license, permission, or other right by which the Respondent could own or use any domain name incorporating the exact VRBO mark. Regardless of whether the login page is a phishing operation, it is clear that the site impersonates the Complainant. In the Panel's view, this is not a use of the disputed domain names in connection with a *bona fide* offering of goods and services. Nor is it a legitimate noncommercial or fair use.

Further, the Registrar has verified that the Respondent's name is "xiao fang bin". That name does not resemble any of the disputed domain names. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain names.

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.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

“(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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”.

All the disputed domain names were registered in 2023, years after the registration of the Complainant’s VRBO marks, including in China where the Respondent is based. All the disputed domain names wholly incorporate the VRBO mark as their initial element, and they all resolve to a login page that displays the Vrbo logo, including its design elements, on a website that offers the same type of services as the Complainant. In view of these circumstances, the Panel finds that the Respondent had the Complainant and its VRBO mark in mind when he registered the disputed domain names.

All the disputed domain names are used to resolve to a login page and associated website that impersonate the Complainant’s Vrbo website, offering the same type of services as the Complainant. In the Panel’s view, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant’s VRBO mark as to the source, sponsorship, affiliation, or endorsement of his website and the vacation rental services on that website, within the terms of paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

Therefore, the Panel finds that the Complainant has established the third element 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 <vrboapp.com>, <vrboapp-us.com>, <vrboglobal.com>, <vrboglobal-us.com>, <vrbogroup.com>, <vrbojob.com>, <vrbojob-us.com>, and <vrboplus.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: February 5, 2024