

## **ADMINISTRATIVE PANEL DECISION**

HomeAway.com, Inc. v. Hildegard Gruener  
Case No. D2023-5396

### **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 Hildegard Gruener, Austria.

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

The disputed domain names, <homeaway-vacation-rental.com>, <homeaway-vrbo.info>, <vrbo-holiday-rentals.com>, and <vrbohomeaway.info>, are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 2, 2024, 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 (REGISTRATION PRIVATE and REDACTED FOR PRIVACY / DOMAINS BY PROXY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 3, 2024, 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 January 3, 2024.

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 January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 13, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 20, 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**

According to information in the Complaint, the Complainant is owned by Expedia, Inc., one of the world's largest travel companies, who acquired the Complainant and all of its brands, including VRBO, in November 2015 and expanded into a fast-growing USD 100 billion alternative accommodations market. 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 (25) years, property rental services have been offered under the VRBO mark by the Complainant and its predecessors.

The Complainant is the holder of a number of trademarks for VRBO and HOMEAWAY, including the United States trademark No. 5681113 for VRBO (word) registered on February 19, 2019 for class of goods and services 9 and 43, the European Union trademark No. 015778848 for VRBO (word) registered on March 3, 2017 for classes of goods and services 9, 36, 43, the United States trademark No. 3596177 for HOMEAWAY (word) registered on March 24, 2009, for the class of services 43, or the European Union trademark No. 006609051 for HOMEAWAY (word) registered on November 11, 2008 for classes of services 35, 38 and 43.

The Complainant has registered the domain name <vrbo.com> since July 30, 1996, that it uses to promote its services. Also, the Complainant has registered the domain name <homeaway.com> which operated as a standalone website to promote the Complainant's vacation rental services for many years before redirection to the <vrbo.com> website.

The Complainant also uses its VRBO mark for its various social media platforms (such as Facebook, Instagram, Youtube) and operates mobile applications offering its VRBO services. Also, the Complainant also used its HOMEAWAY mark on various social media platforms, such as Twitter, Facebook, Instagram and Pinterest. The Complainant also operates mobile applications offering the VRBO and HOMEAWAY services. The Complainant received various awards over the years for its activity, including being the winner of world and United States Luxury Lifestyle Award in 2019 and 2018 respectively in the Villa Rental and Accommodations Services, being ranked the third most innovative global brand in 2018 by The Muse, a Gold Award in Bulldog Reporter's 2014 Digital/Social Awards and Customer Service Department of the Year - Bronze awards in the Stevie Awards for Sales & Customer Service in 2017 and 2015, and was listed in the top ten of the United States Today's Best App/Website for Booking Your Stay in 2015.

The disputed domain name <homeaway-vacation-rental.com> was registered on June 14, 2019, the disputed domain name <vrbo-holiday-rentals.com> was registered on July 30, 2023, the disputed domain name <homeaway-vrbo.info> was registered on November 6, 2023, and the disputed domain name <vrbohomeaway.info> was registered on October 16, 2023, and according to evidence with the Complaint, they resolved before the filing of the Complaint to websites promoting a vacation rental website featuring the Complainant's trademarks and including pay-per-click popup windows. At the date of the Complaint, the disputed domain name <homeaway-vrbo.info> resolved to a 403 Forbidden page. At the date of the Decision the disputed domain name <homeaway-vrbo.info> appears as suspended, the disputed domain name <homeaway-vacation-rental.com> resolves to an error page, and the disputed domain names <vrbo-holiday-rentals.com> and <vrbohomeaway.info> resolve to the web pages described in the Complaint, websites promoting a vacation rental website featuring the Complainant's trademarks.

## **5. Parties' Contentions**

### **A. Complainant**

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

Notably, the Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's distinctive VRBO and HOMEAWAY marks, as they fully incorporate the Complainant's exact VRBO and HOMEAWAY marks and/or combinations thereof. The use of a hyphen to separate the VRBO or HOMEAWAY marks and/or the use of common words, such as "holiday," "vacation" or "rentals" in the disputed domain names does not dispel, and in fact increases, the likelihood of confusion. Such combination suggests that the disputed domain names are for a web site connected to the Complainant for vacation rental properties.

As regards the second element, the Complainant argues that the Respondent is not commonly known by the disputed domain names, particularly as the Respondent is a repeat cybersquatter, that has a history of registering and using domain names based on the names and marks of others, including of the Complainant, and the Respondent owns no rights in the VRBO and HOMEAWAY trademarks. The Complainant argues 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. The Complainant contends that when a user visits the Respondent's website at the disputed domain names a prominent pop-up window featuring the HOMEAWAY and VRBO marks asking the consumer to search a destination appears, which is a way to drive web users to a click through revenue page with offerings for vacation rentals by various parties, some of which compete directly with the Complainant, as when the user clicks on the pop-up window or attempts to close the window, the user is immediately taken to a click through revenue page. As such, the Respondent is neither using the disputed domain names in connection with a bona fide offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain names. The Respondent has used the disputed domain names, without permission or authorization from the Complainant, to capitalize on the VRBO and HOMEAWAY marks solely for commercial gain.

With respect to the third element, the Complainant argues that the Respondent's bad faith registration of the disputed domain names is established by the fact that the disputed domain names completely incorporate the Complainant's exact VRBO and/or HOMEAWAY marks, were registered long after the Complainant's rights in its VRBO and HOMEAWAY marks were established and the Complainant registered the VRBO and HOMEAWAY marks, and after the Complainant's services became well-known. The fact that the Respondent registered domain names that consists of the VRBO or HOMEAWAY marks, and has used pop-up windows featuring the Complainant's logos for the VRBO and HOMEAWAY marks, makes it abundantly clear that the Respondent was well aware of the VRBO and HOMEAWAY marks and specifically targeted the Complainant. 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 (including the Complainant and its affiliates) in bad faith for the Respondent's own profit.

### **B. Respondent**

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

## **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the

particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) 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 3.0](#), section 1.7.

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

The entirety of the Complainant's HOMEAWAY mark or VRBO mark, or both, are reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms in the disputed domain names <homeaway-vacation-rental.com>, <homeaway-vrbo.info> and <vrbo-holiday-rentals.com> (here, "vacation", "rental", "holiday", "rentals" and hyphens) 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 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. [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 Complainant has proved it holds rights over the trademarks VRBO and HOMEAWAY, and claims that the Respondent has no legitimate reason to register or acquire the disputed domain names. There is no evidence that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of

the disputed domain names. Rather, according to un rebutted evidence with the Complaint, the disputed domain names resolved to websites promoting a vacation rental website under the names of VRBO and HOMEAWAY along with (i) such legends as “Vacation Home Rentals by Owner,” “Holiday Vacation Rentals House Rentals & More” and “Vacation Rental Marketplace,” and (ii) copies of the Complainant’s marks and logos that are, and have been, featured on the Complainant’s official websites. Also, the websites at the disputed domain names include pay-per-click popup windows redirecting to competitors of the Complainant. According to section 2.9 of the [WIPO Overview 3.0](#). “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. In this case, the PPC links generate search results with competing services to those offered by the Complainant. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent’s part.

Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the nature of the disputed domain names carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

There is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

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.

According to the un rebutted assertions of the Complainant, its VRBO and HOMEAWAY trademarks were widely used in commerce well before the registration of the disputed domain names. The disputed domain names are confusingly similar with the Complainant’s trademarks and include terms used in the Complainant’s industry; also, the website at the disputed domain names displayed the Complainant’s trademarks. The Complainant denies extending an authorization for such use. Given the circumstances in the case, the Panel considers that the Respondent must have had knowledge of the Complainant’s rights in the VRBO and HOMEAWAY trademarks when it registered the disputed domain names and it has intentionally created a likelihood of confusion with the Complainant’s trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

The disputed domain names resolved to websites promoting a vacation rental website under the names of VRBO and HOMEAWAY and redirected through a pop up window to PPC advertisements of the Complainant’s competitors. Given the confusing similarity between the Complainant’s trademarks and the disputed domain names, the distinctiveness and repute of the Complainant’s trademarks, Internet users would likely be confused into believing that the Complainant is affiliated with the website to which the disputed domain names resolve. Presumably, the Respondent intends to benefit from the confusion created: it is likely that the Respondent earns income when Internet users click on the links in search of the Complainant’s services.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the un rebutted information in the Complaint shows that the Respondent was involved in previous UDRP proceedings where similar factual situations caused the concerned UDRP panels to decide in favor of the complainant (See e.g.,

*Homeaway.com, Inc. v. Hildegard Gruener*, WIPO Case No. [D2023-4906](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering “the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct”.

Further, the Respondent has not participated in these proceedings and has failed to rebut the Complainant’s contentions or provide any evidence of actual or contemplated good-faith use.

The fact that the disputed domain names <homeaway-vrbo.info> and <homeaway-vacation-rental.com> do not currently resolve to an active website does not prevent a finding of bad faith in the circumstances of the case.

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 names, <homeaway-vacation-rental.com>, <homeaway-vrbo.info>, <vrbo-holiday-rentals.com>, and <vrbohomeaway.info>, be transferred to the Complainant.

/Mihaela Maravela/

**Mihaela Maravela**

Sole Panelist

Date: March 4, 2024