

ADMINISTRATIVE PANEL DECISION

Brendan Vacations, Inc. v. Kuichuan Wang, Kuichuan Wang
Case No. D2024-0534

1. The Parties

The Complainant is Brendan Vacations, Inc., United States of America (“U.S.”), represented by Minx Law, U.S.

The Respondent is Kuichuan Wang, Kuichuan Wang, China.

2. The Domain Name and Registrar

The disputed domain name <brendan-vacations.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 6, 2024. On February 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2024, 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 (UNLISTED Privacy@cosmotown.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 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 February 8, 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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2024.

The Center appointed Delia-Mihaela Belciu as the sole panelist in this matter on March 8, 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 a corporation from California organized on August 25, 2006. The Complainant's primary business is providing travel services including organizing travel tours and related reservation booking and transport services.

In connection with such services, Complainant owns the following U.S. registrations for the marks BRENDAN VACATIONS and BRENDAN:

- U.S. national trademark No. 5,300,617 for BRENDAN VACATIONS, registered on October 3rd, 2017, for services in classes 39, 41, 43;
- U.S. national trademark No. 2,753,649 for BRENDAN, registered on August 19, 2003, for services in class 39.

The Complainant actively markets and offers its travel services at the webpage located at "www.brendanvacations.com".

In addition, according to the evidence filed by the Complainant, the Complainant has used BRENDAN VACATIONS logo, identified in the filed Complaint, in connection with travel services since at least as early as January 5, 2019.

The disputed domain name <brendan-vacations.com> was registered on November 29, 2023, and resolves to a website which offers travel services. This website appears to fraudulently impersonate the Complainant and it appears to be engaging in illegal activity, as it is advertising fake job openings and soliciting personal data from interested job seekers.

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:

(i) the disputed domain name is identical or confusingly similar to the Complainant's BRENDAN VACATIONS mark as it consists of the Complainant's identical mark, BRENDAN VACATIONS, with the mere addition of a hyphen in between the two words;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name for a number of reasons, among which that, (1) the Respondent is not affiliated with the Complainant, nor has the Complainant's authorization to use the marks BRENDAN, BRENDAN VACATIONS, or the BRENDAN VACATIONS Logo, (2) the Respondent, who has hidden its identity through a privacy service, is also not commonly known by the name Brendan Vacations, (3) the Respondent is using the website "www.brendan-vacations.com" corresponding to the disputed domain name to fraudulently impersonate the Complainant and this is evidenced by the fact that (a) on this website the Respondent claims to be the website for Brendan Vacations, (b) the website prominently displays the full BRENDAN VACATIONS Logo at

the top, thus giving the impression that the website is the official webpage of the Complainant, (c) the website displays a copyrighted video from one of the Complainant's affiliates. The Treadright Foundation, whose logo, videos, and mission to promote sustainable travel are commonly marketed with the Complainant's services. The copied video displays both the BRENDAN VACATIONS Logo as well as the name and logo of The Treadright Foundation, further giving the false impression that the website is the Complainant's website and, like the Complainant's business, is approved by The Treadright Foundation, the website contains other travel related images and content, further associated with the Complainant's line of business, (d) the Respondent also appears to be engaging in illegal activity, as it is advertising fake job openings and soliciting personal data from interested job seekers.

(iii) the disputed domain name was registered and is being used in bad faith for a number of reasons, among which that, (1) the disputed domain name was registered after the Complainant's established rights in the BRENDAN VACATIONS mark, (2) the Respondent is using the website "www.brendan-vacations.com" corresponding to the disputed domain name to fraudulently impersonate the Complainant, (3) the Respondent is advertising fake job openings and fraudulently solicit personal data from third parties interested in applying for jobs at the Complainant's organization.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to succeed, such must prove, according to paragraph 4(a) of the Policy, 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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In case all three elements above have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. Thus, the Panel will deal with each of the requirements in turn.

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.

Based on the available record, the Panel finds 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 Panel finds that the entirety of the BRENDAN VACATIONS mark is reproduced within the disputed domain name with the mere addition of a hyphen in between the two words. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In what concerns the addition of the generic Top-Level Domain ("gTLD") ".com" in relation to the disputed domain name, such is viewed as a standard registration requirement, and is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

Based on the available record, 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 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.

Thus, based on the available evidence, the Respondent does not appear to be commonly known by “brendan vacations”, and is not affiliated with the Complainant, nor has Complainant’s authorization to use the BRENDAN, BRENDAN VACATIONS marks, or the BRENDAN VACATIONS Logo.

The disputed domain name comprises the Complainant’s BRENDAN VACATIONS mark in its entirety with the mere addition of a hyphen in between the two words, leading thus to confusion and misleading Internet users into believing that the website associated to the disputed domain name is operated by the Complainant or by an affiliated entity with the Complainant’s consent. [WIPO Overview 3.0](#), section 2.5.1.

Moreover, based on the available evidence, the website associated to the disputed domain name impersonates the Complainant and the Respondent appears to have engaged in illegal activity, as it is advertising fake job openings and soliciting personal data from interested job seekers.

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

All the above does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

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.

In the present case, the Panel notes that the Complainant’s rights in the BRENDAN VACATIONS mark predate the registration date of the disputed domain name.

In light of the above, the Panel finds that it is not conceivable that the Respondent registered the disputed domain name without knowledge of the Complainant's BRENDAN VACATIONS mark, which supports a finding of bad faith registration. [WIPO Overview 3.0](#), section 3.2.2.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's BRENDAN VACATIONS mark.

The Respondent's incorporation into the disputed domain name of the Complainant's BRENDAN VACATIONS mark in its entirety, with the mere addition of a hyphen in between the two words, leading thus to confusion and misleading Internet users into believing that the website associated to the disputed domain name is operated by the Complainant or by an affiliated entity with the Complainant's consent, the use of the disputed domain name in relation to an active website which offers travel services as the one of the Complainant, website which incorporates the Complainant's trademark, and imagery with no disclaimers as to the lack of any relationship with the Complainant, suggest that the Respondent intended to attract Internet users to a false website looking like an official website of the Complainant by intentionally creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the services offered and promoted through said website, support a finding of bad faith registration and use according to paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), sections 3.1.4.

In addition, based on the available records, the Respondent appears to be advertising fake job openings and fraudulently soliciting personal data from third parties interested in applying for jobs at Complainant's organization.

Panels have held that the use of a domain name for illegal activity, like phishing, impersonation/passing off, 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 name 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 paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <brendan-vacations.com> be transferred to the Complainant.

/Delia-Mihaela Belciu/

Delia-Mihaela Belciu

Sole Panelist

Date: March 22, 2024