

ADMINISTRATIVE PANEL DECISION

Brendan Vacations, Inc. v. Kuichuan Wang
Case No. D2024-0598

1. The Parties

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

The Respondent is Kuichuan Wang, China.

2. The Domain Name and Registrar

The disputed domain name <brendanvacations-sys.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 8, 2024. On February 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 12, 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 12, 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 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2024.


The Center appointed David Stone as the sole panelist in this matter on March 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

The Complainant is a California-based company established in 2006 which provides travel services including organizing travel tours and related reservation booking and transport services.

The Complainant owns the following registered trademark (the “Registered Mark”):

- BRENDA VACATIONS: US Trademark registration no. 5,300,617, registered on October 3, 2017, in international classes 39, 41, and 43 (with no claim made to the exclusive right to use “VACATIONS” *solus*).

The Complainant currently uses  prominently at the top of its website at the domain name <brendanvacations.com> and has done so since at least 2019 (the “BV Logo”).

The Complainant is the owner of the domain name <brendanvacations.com> where the Complainant (and before the Complainant, its predecessor) has marketed travel services since at least July 15, 2007.

The disputed domain name was created on November 29, 2023. At the date of this decision, the Respondent is maintaining a website at the disputed domain name which displays prominently the BV Logo (and thereby also the Registered Mark) at the top of a pop-up window that is presented to users instantly upon landing on the site. Once the pop-up is closed, the homepage of the website (i) displays prominently the BV Logo (and thereby also the Registered Mark) at the top of the website page; (ii) states “Welcome to BrendanVacation” in large font; (iii) auto-plays in a large viewer a video which contains numerous uses of the BV Logo (and thereby also the Registered Marks; (iv) displays travel-related images and content, such as possible tours; and (v) claims a number of hotels and resorts as “Partners”. There is also use of the BV Logo (and thereby also the Registered Mark) elsewhere on the site. Additionally, the Complainant also provides copies of several emails received from different individuals claiming that they lost money by using the website platform connected with the disputed domain name.

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.

The Complainant contends that, under the first element, the addition of the hyphen and the term “sys” is not material for purposes of determining confusing similarity. The letters “sys” is an abbreviation of the descriptive term “systems”. It merely refers to systems that may be used by the Complainant’s business and gives the impression of an internal website portal for the Complainant’s employees and agents. The Complainant contends that this is particularly so in light of the phishing scheme that it alleges is being run through the website on the disputed domain name (discussed further below).

Under the second element, the Complainant contends that the Respondent is not affiliated with the Complainant, nor has the Complainant authorized the Respondent to use the BV Logo or the Registered Mark. The Respondent has not made use of the disputed domain name in connection with any bona fide offering of goods or services. Instead, the Complainant contends that the Respondent is using the disputed domain name to impersonate the Complainant and conduct illegal activity, namely, a job recruitment scam whereby third parties are led to believe they have been hired by the Complainant and are induced as part of the terms of their alleged employment to provide personal data and deposit funds into an account maintained

by the Respondent. The Complainant has provided copies of emails showing its communications with these third parties.

Under the third element, the Complainant contends that the Respondent acquired the disputed domain name in order to hijack the Complainant's goodwill in its BV Logo and Registered Mark to solicit fraudulently personal data and money from third parties interested in applying for jobs at the Complainant's organisation. The Complainant contends that the video shown on the homepage of the website at the disputed domain name is a copyright-protected video from one of the Complainant's affiliates. The Complainant provides evidence of actual confusion resulting from the actions of the Respondent. Further, the Complainant alleges a pattern of bad faith and has filed a similar complaint (*Brendan Vacations, Inc. v. Kuichuan Wang, Kuichuan Wang*, WIPO Case No. [D2024-0534](#)) in respect of the domain name <brendan-vacations.com>, which is said to resolve to an identical webpage.

B. Respondent

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

6. Discussion and Findings

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 for the purposes of the Policy, namely the Registered Mark. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Registered Mark is reproduced within the disputed domain name. The generic Top-Level Domain (gTLD) ".com" is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. The Panel finds that the additions of a hyphen and "sys" (an abbreviation for "system") at the end of the Registered Mark do not prevent confusing similarity. Accordingly, the disputed domain name is confusingly similar to the Registered Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel's finding of confusing similarity is not founded on, but is clearly supported by, the Complainant's evidence of actual confusion (discussed further below).

Although the addition of other terms, here the hyphen and the abbreviation "sys", 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 name and the Registered 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 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.

Further, panels have held that the use of a domain name for illegal activity, here, claimed phishing and impersonation/passing off (discussed further below), can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 disputed domain name differs from the Complainant's official domain name <brendanvacations.com> by just "-sys" before the gTLD. Once the Respondent had acquired the disputed domain name, it created a website at that domain name which (i) displays prominently the BV Logo (and thereby also the Registered Mark) at the top of the website page; (ii) states "Welcome to BrendanVacation" in large font; (iii) auto-plays in a large viewer a video which contains numerous uses of BV Logo (and thereby also the Registered Mark); (iv) displays travel-related images and content; and (v) claims a number of hotels and resorts as "Partners".

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.

Panels have found that evidence of actual confusion and of the respondent seeking to cause confusion supports a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark. [WIPO Overview 3.0](#), section 3.1.4.

Further, panels have held that the use of a domain name for illegal activity, here, claimed phishing, impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The disputed domain name is confusingly similar to the Registered Mark for the reasons already discussed. The Panel also finds that the content of the website at the disputed domain name is strongly indicative of bad faith because it is powerful evidence of the Respondent seeking to cause confusion. In particular, the prominent use of the Registered Mark shows an intention by the Respondent to confuse Internet users, especially given the Registered Mark is commonly used by the Respondent in the form of the BV Logo. Moreover, the Panel accepts the Complainant's evidence of actual confusion, which shows the Complainant receiving emails from two different individuals requesting refunds in connection with financial transactions to which the Complainant was not a party.

Further, the Panel finds that the website at the disputed domain name is aimed at furthering illegal activity that has resulted in at least two different individuals believing, incorrectly, that they were employed by the

Complainant. Given that the use of a domain name for per se illegitimate activity can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith.

[WIPO Overview 3.0](#), section 3.1.4.

Furthermore, the Respondent has not attempted to refute any of the Complainant's contentions, which casts additional doubt on the nature of its conduct. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel concludes that the actions of the Respondent in choosing the disputed domain name and its website content were aimed at attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Registered Mark. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

The Panel also takes note of the Respondent's involvement in another UDRP proceeding where in the Panel also ordered the transfer of the domain name at issue (e.g., *Brendan Vacations, Inc. v. Kuichuan Wang, Kuichuan Wang*, supra.) which is an additional indicator of the Respondent's bad faith as regards the Complainant.

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 <brendanvacations-sys.com> be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: April 3, 2024