

ADMINISTRATIVE PANEL DECISION

HomeAway.com, Inc. v. Sabbir Rahman, Softentric
Case No. D2024-1428

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 Sabbir Rahman, Softentric, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <yourhome-away.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2024. On April 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 April 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 7, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 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 operates a global online marketplace for the vacation rental industry, where over two million online bookable listings of vacation rental homes and apartments in over 190 countries are offered. One of the Complainant's brands for this business is HOMEAWAY.

The Complainant is the owner of the following trademark registrations for the sign "HOMEAWAY" (the "HOMEAWAY trademark"):

- the United States trademark HOMEAWAY with registration No. 3596177, registered on March 24, 2009 for services in International Class 43;
- the International trademark HOMEAWAY with registration No. 978536, registered on July 24, 2008 for services in International Classes 35, 38 and 43;
- the European Union trademark HOMEAWAY with registration No. 006609051, registered on November 11, 2008 for services in International Classes 35, 38 and 43; and
- the Indian trademark HOMEAWAY with registration No. 3703742, registered on December 15, 2017 for goods and services in International Classes 9, 36 and 43.

The Complainant is also the owner of the domain name <homeaway.com>, which now redirects to the Complainant's primary website at the domain name <vrbo.com>. The domain name <homeaway.com> previously resolved to a website promoting the Complainant's vacation rental services under the HOMEAWAY trademark.

The disputed domain name was registered on October 4, 2023. It resolves to an English language website that offers hotel and vacation home rental bookings.

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 states that the disputed domain name is confusingly similar to its HOMEAWAY trademark, because it includes this trademark and the addition of a hyphen and the dictionary word "your" does not distinguish the disputed domain name from the trademark, which is easily recognizable in it.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by the disputed domain name and has not been authorized by the Complainant to use the HOMEAWAY trademark, which was extensively used by the Complainant long before the Respondent's registration and first use of the disputed domain name. The Complainant points out that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name. According to the Complainant, the Respondent has sought to profit by registering and using the disputed domain name for a website that offers competing hotel and vacation rental booking services. The Complainant submits that this creates a risk for implied affiliation with the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent attempts to profit from the likely association of the disputed domain name with the Complainant and its HOMEAWAY trademark to attract Internet users to the website at the disputed domain name to offer them competing hotel and vacation rental booking services for the Respondent's commercial gain.

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 the HOMEAWAY trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the HOMEAWAY trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the HOMEAWAY trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, "your") or punctuation marks may bear on assessment of the second and third elements, the Panel finds the addition of the term "your" and of the hyphen between "home" and "away" does not prevent a finding of confusing similarity between the disputed domain name and the HOMEAWAY trademark 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.

The disputed domain name is confusingly similar to the Complainant's HOMEAWAY trademark, which was registered 15 years earlier and has been used for a long period of time in relation to hotel and vacation home rental services in respect of millions of properties internationally. The inclusion of the word "your" does not significantly affect the overall appearance of the disputed domain name, and Internet users may well regard it as related to the Complainant. Such impression would be strengthened by the fact that the associated website offers the same services as those offered by the Complainant, without including any disclaimer for

the lack of relationship between the Parties. The Respondent has not submitted a Response and has not provided any arguments as why it should be regarded as having rights or legitimate interests in the disputed domain name.

Taking the above into account, the Panel accepts as more likely than not that the Respondent has registered and used the disputed domain name targeting the Complainant's HOMEAWAY trademark in an attempt to attract visitors to its website where to offer them services competing with the Complainant's services. The Panel does not regard such conduct as giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

The Panel therefore 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.

As discussed in section 6.B above, the Respondent has registered a domain name that is confusingly similar to the Complainant's popular HOMEAWAY trademark 15 years later, and has used it for a website offering services that compete with the services of the Complainant, without including a disclaimer for the lack of relationship with the Complainant.

Taking the above into account, and in the lack of any evidence or allegation to the contrary, it appears as more likely than not that the Respondent has registered and used the disputed domain name in an attempt to attract for commercial gain Internet users by confusing them that the disputed domain name and the hotel and vacation home rental bookings offered on the associated website are affiliated with or endorsed by the Complainant, which supports a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy.

The Panel therefore 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 <yourhome-away.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: May 22, 2024