

ADMINISTRATIVE PANEL DECISION

Airbnb, Inc. v. Nick Smith
Case No. DIO2024-0005

1. The Parties

The Complainant is Airbnb, Inc., United States of America ("United States"), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is Nick Smith, United States.

2. The Domain Name and Registrar

The disputed domain name <airbnbseo.io> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 1, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 6, 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 amendment to the Complaint on March 7, 2024.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO 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 March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Center received an email from an individual purporting to communicate on behalf of the Respondent on March 21, 2024. The Respondent did not reply to the Complainant's contentions. Accordingly, the Center notified the commencement of panel appointment process on April 2, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on April 10, 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 provides a community marketplace for people to list, discover, and book accommodations and experiences around the world. It owns the trademark AIRBNB which it has registered in a number of countries, including the United States (Reg. No. 3,971,784, registered on May 31, 2011). According to the Whois records, the disputed domain name was registered on December 6, 2023. The Respondent has used the disputed domain name to operate a website purportedly to assist property owners to increase rental bookings with SEO keywords. The Respondent offers services through the disputed domain name regarding the Complainant's competitors and includes a disclaimer "AirbnbSEO is not affiliated with Airbnb Inc".

Currently, the disputed domain name states: "The content for this page is empty or has not been saved. Please edit this page and "Save" the contents in the builder".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On March 21, 2024, an unidentified individual sent a message to the Center purporting to communicate on behalf of the Respondent, generally denying both knowledge of the situation and registration/ownership of the disputed domain name and asking why information was being disclosed in the matter.

6. Discussion and Findings

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 name is 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 name, and (iii) the disputed domain name has been registered or is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.¹ 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. Id. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

¹Although [WIPO Overview 3.0](#) is directed to the Uniform Domain Name Dispute Resolution Policy ("UDRP"), given the similarity between the UDRP and the .IO Policy, it is appropriate to have regard to these principles except to the extent that the .IO Policy diverges from the UDRP.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the AIRBNB mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the AIRBNB mark in its entirety with the term “SEO”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s AIRBNB mark. See [WIPO Overview 3.0](#), section 1.8. The AIRBNB mark remains recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent is not using the disputed domain name in connection with the bona fide offering of goods or services, but is using the disputed domain name to offer services related to those of the Complainant without authorization, (2) the Respondent has not been commonly known by the disputed domain name, (3) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, and (4) the Respondent is not making a fair use of the disputed domain name.

UDRP panels have recognized that website operators using a domain name containing a complainant’s trademark to undertake sales related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the “*Oki Data* test”, (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

While the Respondent technically is not a reseller or distributor, the Panel notes the Respondent’s services are ancillary or connected to the Complainant’s services. The Panel has applied the *Oki Data* test to the facts of this case and finds that the circumstances do not warrant the finding of a bona fide offering of goods and services. In particular, the record shows the website associated with the disputed domain names was used to promote services competitive to those services of the Complainant (e.g., the services of VRBO).

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

The Panel finds that the inclusion of the disclaimer does not change this finding as the Panel considers that the Respondent registered the disputed domain name in order to divert visitors to its website taking an unfair advantage of the confusing similarity with the Complainant’s trademark. In addition, any disclaimer would remain under the Respondent’s control who can change it at any point.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered or Used in Bad Faith

Because the Complainant's AIRBNB mark is well-known, and is registered in jurisdictions around the world, the Panel finds it likely that the Respondent was aware of that mark when it registered the disputed domain name. In the circumstances of this case, without the benefit of any explanation whatsoever from the Respondent as to a possible good faith use of the disputed domain name, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The circumstances also demonstrate bad faith use of the disputed domain name in terms of the Policy. Where a disputed domain name is "so obviously connected with such a well-known name and products...its very use by someone with no connection with the products suggests opportunistic bad faith". See, *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#). Bad faith use of the disputed domain name is shown from the commercial nature of the website associated with the disputed domain name, i.e., using the disputed domain name—which is confusingly similar to the Complainant's mark—to purportedly offer services related to the Complainant and to promote services competitive to the Complainant.

The Panel finds that the Complainant has succeeded under this third element.

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 <airbnbseo.io> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: April 24, 2024