

ADMINISTRATIVE PANEL DECISION

TATA SIA Airlines Limited v. Devki Infotech

Case No. D2023-2765

1. The Parties

The Complainant is TATA SIA Airlines Limited, India, represented by Ira Law Firm, India.

The Respondent is Devki Infotech, India.

2. The Domain Name and Registrar

The disputed domain name <vistarastays.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 June 29, 2023. On June 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 2023, 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 together with the amendment to 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 July 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 7, 2023.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on August 28, 2023. 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 an airline under the mark VISTARA. The Complainant is the registered owner, user, and proprietor of the mark VISTARA in India as well as in several jurisdictions in the world. Complainant's earliest trademark registrations for its mark VISTARA date back to 2014 including Indian trademark registration number 2748039, dated June 02, 2014. On the other hand, the disputed domain name <vistarastays.com> was registered on July 05, 2022. At the time of the decision, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant under its mark VISTARA claims to be a trusted brand in the travel and hospitality sectors in India ever since it started operations in the year 2014. The Complainant's website "www.airvistara.com" provides information on pricing, availability and booking facilities for the airline services. The Complainant claims to have been consistently recognised by its peers in the airline industry, travel magazines and has won several awards and accolades since the year 2016. In support of its business success, the Complainant has submitted gross revenue figures from 2018 until 2022.

The Complainant's mark VISTARA is registered in India as well as in other jurisdictions such as Australia, China, the European Union, Japan, Nepal, Singapore, the United States of America, and the United Arab Emirates. Details of such registrations are provided by the Complainant. The Complainant's earliest Indian registration for the mark VISTARA is under number 2748039 and is dated June 2, 2014. The Complainant has filed copies of Indian trademark registration certificates for its mark VISTARA as Annex C.

The Complainant states that its mark VISTARA has been declared a well-known mark in India by the Delhi High Court. Several court orders from India granting injunctions on the basis of the Complainant's rights in the mark VISTARA have been submitted by the Complainant as Annex E.

The Complainant argues that the disputed domain name uses its mark VISTARA in its entirety and hence is identical and confusingly similar to the Complainant's mark VISTARA. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent registered the disputed domain name with *mala fide* intention being fully aware of the Complainant's mark VISTARA. The Respondent is presumed to have constructive notice of the commercial value and significance of the Complainant's mark VISTARA. Given that VISTARA is a well-known mark, the Complainant argues that the Respondent knew or should have known of the registration and use of the Complainant's mark prior to registration of the disputed domain name. It is the Complainant's case that the Respondent registered the disputed domain name in bad faith to ride upon the goodwill associated with the Complainant's well-known mark VISTARA.

The Complainant also contends that the website under the disputed domain name "www.vistarastays.com", has been widely reported as duping individuals by taking large sums of money under the pretext of booking luxury stays. News articles in this regard have been filed by the Complainant as Annex I with the Complaint. This fact, the Complainant contends demonstrates Respondent's bad faith in registering and using the disputed domain name.

B. Respondent

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

6. Discussion and Findings

As per paragraph 5(e) of the Rules where a Respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- 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 and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has produced trademark registration certificates in India, and other jurisdictions, in respect of the mark VISTARA. Therefore, the Panel finds that the Complainant has trademark rights for VISTARA.

The disputed domain name incorporates the Complainant's mark VISTARA in its entirety, together with the term "stays". Referring to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8, this Panel notes that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

In the present case, the Complainant's mark VISTARA is clearly recognizable in the disputed domain name and therefore the addition the term "stays" does not prevent a finding of confusing similarity. (See *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#)).

The generic Top-Level Domain ("gTLD") ".com" is generally disregarded for the purposes of comparison under this element.

In view of the above-mentioned findings, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark VISTARA and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

B. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has already submitted evidence that it holds exclusive rights in the trademark VISTARA by virtue of statutory registrations and by common law use, which rights have accrued in the Complainant's favour. The Complainant alleges that the website "www.vistarastays.com" was being used to defraud people under the pretext of booking luxury stays. Website extracts have not been filed with the Complaint. At present, the disputed domain name does not resolve into an active website. Still, the Panel is of the view

that the use of the disputed domain name is neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use in the present circumstances. The Panel also notes that the nature of the disputed domain name carries a risk of implied affiliation.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: “While the overall burden of proof in UDRP proceedings is on the complainant, [...] 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 to demonstrate its rights or legitimate interest in the domain name”.

The Respondent has failed to file a response to rebut the Complainant’s *prima facie* case or to advance any claim as to rights or legitimate interests in the disputed domain name (particularly, in accordance with paragraph 4(c) of the Policy). Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see section 3.1 of the [WIPO Overview 3.0](#)).

As set out in the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Here, there is no doubt that the Complainant’s mark VISTARA is a recognised and popular mark, in particular in India where the Parties are located. Owing to the fame and reputation of the mark VISTARA, the Respondent is presumed to have constructive notice of the Complainant’s mark. Hence, the Panel is satisfied that the Respondent knew, or in any event ought to have known, of the mark’s existence.

Moreover, there is no plausible justification for the Respondent to subsume the Complainant’s VISTARA trademark in the disputed domain name, along with the term “stays”, if it was not in connection with the Complainant’s trademark. The Panel therefore concludes that the disputed domain name was registered in bad faith.

The Complainant alleges that the website linked to the disputed domain name was being used to defraud people under the pretext of booking luxury stays. Based on its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules, the Panel undertook a limited search on the Internet Archive and determined that the disputed domain name was used to resolve to a website purportedly offering accommodation services. Noting the Complainant’s evidence of news articles pointing towards a possible fraudulent use of the disputed domain name and the composition of the disputed domain name, the Panel is of the opinion that it is not possible to conceive of any good faith use to which the disputed domain name could be put.

Absent any formal response from the Respondent, little is known about the Respondent. The Respondent has not availed himself of the opportunity to present any case of good faith that it might have had, and, in view of the circumstances, the Panel cannot conceive of any. The Panel finds that on the balance of probabilities, the Respondent’s conduct in registering and using the disputed domain name constitutes opportunistic bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of 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, <vistarastays.com> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: September 8, 2023