

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. Domain Privacy / Demis Terel
Case No. D2022-2960

1. The Parties

The Complainant is Carvana, LLC, United States of America (“United States” or “U.S.”), internally represented.

The Respondent is Domain Privacy, Hong Kong, China / Demis Terel, Germany.

2. The Domain Name and Registrar

The disputed domain name <carvana-mgr.com> is registered with NiceNIC International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2022. On August 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 13, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 2022 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 August 15, 2022.

The Center verified that the Complaint together with the amendment to 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 August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 14, 2022.

The Center appointed Cherise Valles as the sole panelist in this matter on September 28, 2022. 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 leading e-commerce platform for buying and selling used cars. The Complainant is a Fortune 500 company that provides its vehicle dealership services and vehicle financing services online throughout the United States under its CARVANA marks and through its primary website at “www.carvana.com” (Annex 5 of the Complaint). The Complainant delivers vehicles throughout the U.S. and also operates more than 30 Carvana vending machines located in major cities in the United States (Annex 5 of the Complaint). The Complainant has grown rapidly since its launch in January 2013 and currently provides services to more than 73% of the U.S. population (Annex 6 of the Complaint). The Complainant states that in 2020 alone, it sold more than 240,000 used vehicles to retail customers with sales revenue exceeding USD 5.5 billion (Annex 6 of the Complaint). The Complainant’s website averages more than 8.5 million visitors each month (Annex 6 of the Complaint).

The Complainant indicates that it has expended, and continues to expend, a substantial amount of resources, money, time and effort promoting, marketing, advertising, and building consumer recognition and goodwill in what it regards as its extremely valuable and famous Carvana brand goods and services under and in connection with its highly recognized CARVANA marks.

The Complainant holds several trademark registrations for CARVANA and variations thereof in the United States (collectively, the “CARVANA Marks”). The following is a partial listing of the Complainant’s U.S. trademark registrations:

- CARVANA (U.S. Registration No. 4,328,785), filed on April 11, 2011, and registered on April 30, 2013, for “online dealership services featuring automobiles” in International Class 35, and “online financing services in the field of automobile loans” in International Class 36; and,
- CARVANA (U.S. Registration No. 5,022,315), filed on January 7, 2016, and registered on August 16, 2016, for “shipping, pickup, and delivery services for automobiles,” in International Class 39.

The disputed domain name <carvana-mgr.com> was registered by the Respondent on July 26, 2022. It resolves to a website displaying the Complainant’s CARVANA Marks and its logo mark and purportedly offering for sale used cars.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain name is confusingly similar to the Complainant's CARVANA Marks, in the light of the fact that it wholly incorporates the Complainant's mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain name. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name that included its trademarks.

The disputed domain name has been registered and is being used in bad faith.

- The Complainant asserts that the disputed domain name was registered and is being used in bad faith. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for a complainant to succeed, the complainant must prove each of the following elements:

- (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 Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

A. Identical or Confusingly Similar

To prove this element, under the UDRP, the complainant must have relevant rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

Given the Complainant's trademark registrations as detailed above, the Panel finds that the Complainant has established its trademark rights in CARVANA for the purposes of paragraph 4(a)(i) of the Policy.

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name incorporates the Complainant's CARVANA Marks in their entirety with an addition of a hyphen and three letters, "mgr", a common abbreviation for "merger". These additions to the Complainant's CARVANA Marks do not prevent a finding of confusing similarity.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Other UDRP panels have recently ordered that a disputed domain name be transferred to the Complainant where the disputed domain name simply added a word or some letters to the Complainant's CARVANA Marks. See, for example, *Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Cline Davis*, WIPO Case No. [D2020-0859](#); *Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1376](#).

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top Level Domain ("TLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable [TLD] in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element of the confusing similarity test". In the present case, the TLD ".com" is disregarded under the first element of the confusing similarity test.

In light of the foregoing, the Panel finds that the disputed domain name is confusingly similar to the Complainant's CARVANA Marks and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognized in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (see the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the

Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, it appears that the Complainant has established the requisite *prima facie* case under the second element of the Policy.

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's CARVANA Marks in any manner, including in, or as part of, the disputed domain name.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, he was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. Instead, it appears the Respondent is operating a copycat site by using the Complainant's CARVANA Marks and logo mark and images from the Complainant's official website and purportedly offering similar services, in efforts to possibly gain sensitive personal information from unsuspected customers who may well believe the website is affiliated, sponsored, or otherwise related to the Complainant.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name. The Respondent does not appear to have any legitimate trademark, service mark or other intellectual property rights in the term of Carvana. It further appears that the Respondent adopted and continues to use the disputed domain name that wholly incorporates the Complainant's CARVANA Marks for the purpose of: (i) illegally trading upon the Complainant's goodwill to confuse, mislead, deceive and divert customers; and (ii) intentionally tarnishing and diluting the Complainant's valuable and well-known trademark.

The registration of the CARVANA Marks preceded the registration of the disputed domain name by many years. It is clear, therefore, that the Respondent would have been aware of the Complainant's CARVANA Marks when registering the disputed domain name. See, for example, *Carvana LLC v. Nick Dillman*, WIPO Case No. [D2020-1483](#).

Furthermore, the nature of the disputed domain name, consisting of the Complainant's CARVANA Marks and a common abbreviation for "merger", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

In light of the foregoing, the Panel finds that the Complainant has established an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain name was registered and that it is being used in bad faith. The term "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](#)). Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In the present case, the Complainant's submissions relate to paragraph 4(b)(iv) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The nature of the disputed domain name, consisting of the Complainant's trademark with the addition of the letters "mgr" for "merger" carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Further, the disputed domain name is used to link to a website in German displaying the Complainant's CARVANA Marks and logo mark and images from the Complainant's official website as an online marketplace for purported sales of used vehicles, which is the primary business of the Complainant. In the present case, the Respondent seeks to attract Internet users interested in the Complainant's services to its website by creating a likelihood of confusion with the Complainant's trademark.

The Complainant asserts that the disputed domain name is plainly designed to trade on the reputation and goodwill of the Complainant and its CARVANA Marks for financial gain. The Respondent appears to be utilizing the disputed domain name to divert potential users away from the Complainant's primary website at "www.carvana.com", away from the Complainant's authentic CARVANA brand services, and toward the Respondent's impersonating website.

Where a respondent is found to be diverting users to its website (and/or the websites of associated third parties) to generate traffic and sales commissions for its own commercial benefit, such conduct is uniformly recognized as constituting bad faith under the Policy. See, for example, *Net2phone inc v. Dynasty System Sdn Bhd*, WIPO Case No. [D2000-0679](#).

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain name under paragraph 4(a)(iii) 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 <carvana-mgr.com> be transferred to the Complainant.

/Cherise Valles/

Cherise Valles

Sole Panelist

Date: October 12, 2022