

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. zoryan spryn
Case No. D2022-1554

1. The Parties

The Complainant is Carvana, LLC, United States of America (“USA” or “United States”), represented by Bryan Cave Leighton Paisner LLP, USA.

The Respondent is zoryan spryn, USA.

2. The Domain Name and Registrar

The disputed domain name <carvanaauction.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2022. On April 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 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 May 2, 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 amended Complaint on May 5, 2022.

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 May 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 27, 2022.

The Center appointed Brian J. Winterfeldt as the sole panelist in this matter on June 3, 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

Complainant Carvana, LLC (“Complainant” or “Carvana”) is an Arizona limited liability company with its principal place of business at 1930 W. Rio Salado Pkwy., Tempe, Arizona, USA. Complainant is a leading e-commerce platform for buying and selling used cars. Complainant is a Fortune 500 company that promotes and renders its online vehicle dealership services and online vehicle financing services throughout the United States under its well-known CARVANA Marks and through its primary website, <carvana.com>, which hosts its e-commerce platform. Complainant delivers vehicles throughout the USA and also operates more than 30 CARVANA Vending Machines located in major cities in the United States. Complainant currently operates in more than 311 markets, covering more than 81% of the USA population. In 2021, Complainant sold more than 425,000 vehicles to retail customers with used vehicle sales revenue exceeding USD12.8 billion. Complainant’s website averages more than 17.8 million unique visitors each month.

Complainant holds several trademark registrations for the CARVANA mark (the “Mark”) and variations thereof in the United States (the “Marks”), with sample registration details as follows:

- CARVANA, United States Reg. No. 4,328,785, registered on April 30, 2013;
- CARVANACARE, United States Reg. No. 4,971,997, registered on June 7, 2016;
- CARVANA, United States Reg. No. 5,022,315, registered on August 16, 2016.

The disputed domain name was registered on December 26, 2018. Currently, the disputed domain name resolves to a parked webpage hosting pay-per-click links to third parties’ websites.

5. Parties’ Contentions

A. Complainant

According to Complainant, the disputed domain name is identical or confusingly similar to Complainant’s CARVANA trademark in which Complainant has rights as demonstrated through its cited registrations. The Mark was adopted and has been continuously used since at least as early as 2013 in connection with providing online used car retail services. Complainant maintains its online presence through its website hosted at its domain name <carvana.com>. Complainant contends 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 its valuable and famous CARVANA brand goods and services under and in connection with its highly recognized and famous CARVANA Marks. Complainant further notes that previous panels have recognized that the CARVANA mark “is a distinctive, coined term that is heavily advertised and well-known.” See *Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Cline Davis*, WIPO Case No. [D2020-0859](#).

Complainant argues that the disputed domain name fully incorporates the Mark. Complainant also argues that the addition of the generic word “auction” at the end of the Mark is clearly not sufficient to avoid a finding of confusing similarity with Complainant’s prior rights. Complainant argues that, due to the complete reproduction of Complainant’s company name and prior well-known trademarks, Internet users will obviously and wrongly think that the disputed domain name belongs to Complainant or has been registered in its name.

Complainant asserts that Respondent lacks any rights or legitimate interests in the disputed domain name. According to Complainant, Respondent does not have any trademark rights to the Mark, nor does

Respondent make any *bona fide* offering of services on the website to which the disputed domain name resolves. Complainant argues that the Mark is an invented English word and, as such, third parties would not legitimately choose this name unless seeking to create an impression of an association with Complainant. Complainant alleges that Respondent is using the disputed domain name to divert Internet traffic to its website for illicit commercial gain. Complainant also asserts that it has not granted Respondent, by license or otherwise, permission to use the Mark in any way. Complainant argues that the disputed domain name was registered by Respondent without Complainant's consent.

Complainant argues that Respondent both registered and is using the disputed domain name in bad faith. According to Complainant, Respondent registered and used the disputed domain name intentionally in an attempt to attract Internet users to its website for financial gain by creating a likelihood of confusion with Complainant's Mark. Complainant argues that Respondent intends to attract Internet users and consumers looking for legitimate CARVANA services and/or authorized partners to Respondent's own webpage for Respondent's illicit commercial gain. Complainant argues that Respondent is passively holding the disputed domain name for a parked webpage hosting pay-per-click links, which prior panels have found to be bad faith use, particularly when the disputed domain name incorporates a famous trademark, as is the case here. Complainant argues that Respondent could not have been unaware of the existence of Complainant's famous Marks and company name when registering the disputed domain name. Complainant argues that the mere fact that Respondent has registered the disputed domain name which incorporates the famous CARVANA Mark is alone sufficient to give rise to an inference of bad faith. Complainant also argues that Respondent's offer to sell the disputed domain name for USD9,999, coupled with the confusing similarity with Complainant's famous Mark, and the pay-per-click links to third party websites, allows for an inference that Respondent is offering to sell the disputed domain name to Complainant, its competitors, or other third parties, and that the sale price would exceed the registration costs, all in violation of the Policy. Complainant argues that such actions clearly show the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraphs 5(f) and 14(a) of the Rules, if a respondent does not submit a response, in the absence of exceptional circumstances, the panel shall proceed to a decision on the basis of the complaint.

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A respondent's failure to reply to the complainant's contentions does not by itself satisfy a complainant's burden of proof and is not necessarily an admission that the complainant's allegations are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Thus, even though Respondent has failed to address Complainant's contentions, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

A national or international trademark registration is *prima facie* evidence that the holder has the requisite rights in the registered mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence that it owns multiple trademark registrations for the CARVANA trademark as referenced above. Therefore, Complainant has established that it has rights in the Mark.

The remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top-Level-Domain (“TLD”) in which the domain name is registered) is identical or confusingly similar to Complainant’s Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. *Id.*

Here, the disputed domain name incorporates the entirety of the Mark, adding only the word “auction” to the end, which does not prevent a finding of confusing similarity. A side-by-side comparison of the Mark and the disputed domain name reveals that the Mark is easily identifiable within the disputed domain name.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its trademark rights and showing that the disputed domain name is confusingly similar to its CARVANA mark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* showing that Respondent possesses no rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. Once Complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP.

Paragraph 4(c) of the Policy lists the ways that Respondent may demonstrate rights or legitimate interests in the disputed domain name:

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

Here, Complainant has alleged that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has failed to come forward with any evidence showing rights or legitimate interests. Respondent has not submitted any arguments or evidence to rebut Complainant’s contention that Respondent is not an assignee or licensee of Complainant and that Respondent has no other business relationship with Complainant. Complainant has contended that Respondent is not commonly known by the disputed domain name and that there is no evidence that Respondent has established trademark rights in the disputed domain name. Again, Respondent has not provided any evidence or arguments to demonstrate that it has such rights. Complainant has put forward a *prima facie* case that Respondent lacks rights or

legitimate interests in the disputed domain name, which Respondent has not rebutted.

Accordingly, the Panel finds that Respondent does not have any rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. Paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has 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 respondent's 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 online 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 the respondent's website or location.

Here, Respondent's actions align with 4(b)(iv) of the Policy. The disputed domain name contains the entirety of the CARVANA mark, with the addition of the word "auction" to the end. Due to the well-known nature of Complainant's brand, evidenced by its numerous trademark registrations for CARVANA as well as significant brand recognition provided by Complainant and cited previous panel decisions, along with the unauthorized use of the Mark in the disputed domain name, Respondent was undoubtedly aware of Complainant and the Mark when it registered the disputed domain name. Moreover, in these circumstances it appears likely that Respondent used the Mark in the disputed domain name to take unfair advantage of the reputation and goodwill of the Mark to promote click-through revenue through the disputed domain name.

This Panel therefore finds that Respondent acted in bad faith by its registration and use of the disputed domain name, intentionally creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent's website with the purpose of attracting Internet users for commercial gain as per paragraph 4(b)(iv) 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, <carvanaauction.com>, be transferred to the Complainant.

/Brian J. Winterfeldt/

Brian J. Winterfeldt

Sole Panelist

Date: June 13, 2022