

## **ADMINISTRATIVE PANEL DECISION**

Carvana, LLC v. Wu Yu  
Case No. D2022-3382

### **1. The Parties**

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

The Respondent is Wu Yu, China.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 10, 2022. On September 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 September 16, 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 September 16, 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2022.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on October 24, 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 carries on business as an online retailer buying and selling used cars and offering online vehicle dealership services throughout the United States. Its principal trademark is the coined word CARVANA, and its primary website is hosted at <carvana.com>, through which it hosts its e-commerce platform. The business was launched in 2013 and has grown rapidly over the years. In 2020, the Complainant sold more than 240,000 vehicles with sales revenues exceeding USD 5.5 billion.

The Complainant owns registered trademarks for CARVANA in the United States, including Registration No. 4,328,785, issued in 2013, and a number of other CARVANA-formative marks.

The Respondent registered the disputed domain name on August 28, 2022. At the time of filing the Complaint, it redirected traffic to a variety of landing pages, including phishing schemes to collect login credentials from unsuspecting users. Currently, the disputed domain name resolves to a pay-per-click parking page of selling cars and indicating this disputed domain name is for sale.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it owns registered rights to the distinctive CARVANA trademark in the United States, where it holds a well-recognized reputation for its unique e-commerce platform for used vehicles. The Complainant argues that the disputed domain name is confusingly similar to the registered mark because it contains the entirety of the CARVANA mark, differing only by the prefix "m". In the Complainant's view, the Respondent has engaged in a deliberate scheme to deceive Internet users who will mistake the disputed domain name for the Complainant's well-known mark. The addition of the single letter "m" does not obviate confusion.

With respect to the absence of rights or legitimate interests, the Complainant seeks to establish a *prima facie* case, submitting that the Respondent was never authorized to use the disputed domain name and that he has never been commonly known as CARVANA. The Complainant characterizes the Respondent's use of the disputed domain name as part of a fraudulent scheme that purports to alert Internet users to security concerns, in order to obtain phishing login credentials and to facilitate account access for unauthorized users. The circumstances support the conclusion that the Respondent's use of the disputed domain name is not legitimate but is improper and nefarious. In the absence of any response in this matter, the Complainant submits that it should be deemed to have satisfied the second element under the Policy.

With respect to bad faith, the Complainant relies on the evidence described above, relating to the use of phishing schemes by the Respondent. Proof of this sort of deliberate misconduct shows that the Respondent was deliberately targeting the Complainant's trademark rights in CARVANA, resulting in an abusive registration contrary to the Policy.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

(i) The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;

- (ii) The Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant clearly owns a portfolio of rights in its CARVANA trademark, established through long-term use and multiple registrations in the United States where it carries on its business of online retail sales of vehicles.

The test for confusing similarity is described as a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark. The disputed domain name is closely modelled on the trademark in question; it includes the entirety of the distinctive CARVANA mark with a single additional letter “m”. This small variation does not prevent a finding of confusing similarity under the first element. The Complainant’s trademark is clearly recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.8.

The Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Although the Policy places on the complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a complainant to make out a *prima facie* case, which then shifts the burden to the Respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the Respondent fails to produce such evidence, the Complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant has established a plausible *prima facie* case by bringing forward evidence on the following five points: (1) the Respondent has never been associated in any way with the Complainant nor has he ever been authorized to use the CARVANA mark; (2) the Respondent has never been known under the CARVANA mark; (3) CARVANA is a distinctive coined term, which is well known as the primary mark of the Complainant; (4) the disputed domain name is so closely modelled on the CARVANA mark that it has clearly been registered to lure consumers to a site for commercial advantage; and (5) the disputed domain name actually resolved to web pages which attempt to gather phishing login credentials to gain unauthorized access to accounts. The Complainant’s submission that the Respondent’s purpose is unlawful and nefarious is well founded.

The totality of the evidence clearly establishes a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Illegal conduct of this nature is highly probative in connection with this issue. “Panels have categorically held that the use of a domain name for illegal activity (e.g....impersonation/passing off or other types of fraud) can never confer rights or legitimate interests on a respondent.” ([WIPO Overview 3.0](#), section 2.13.1).

Once the Complainant has established a *prima facie* case, the burden then shifts to the Respondent to bring forward evidence of rights and legitimate interests. The Respondent has not filed any submissions relating to this matter. In the absence of any such response, the Panel is prepared to find, for the purposes of this proceeding, that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant is deemed to have satisfied the requirements under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that the disputed domain name constitutes an abusive registration which was registered and used in bad faith. The Respondent clearly set out to target the Complainant. The evidence reveals a

scheme whereby Internet users are diverted away from the Complainant's primary website at <carvana.com> toward the Respondent's website which then redirects back to the original CARVANA website. This redirect makes it clear that the Respondent was fully aware of the Complainant and its rights to the CARVANA mark at all material times.

The disputed domain name also resolved to a number of webpages that purport to alert consumers to security concerns and attempt to obtain login credentials to facilitate account access to unauthorized users.

[WIPO Overview 3.0](#) (section 3.4) recognizes phishing and other kinds of fraudulent conduct as constituting evidence of bad faith. See also *GitHub, Inc. v. Domain Administrator*, See *PrivacyGuardian.org / Alex Bro*, WIPO Case No. [D2018-2045](#) which finds that the unauthorized collection of "login credentials from unsuspecting users is a strong example of bad faith under the Policy".

The Complainant has satisfied 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 <mcarvana.com> be transferred to the Complainant.

*/Christopher J. Pibus/*

**Christopher J. Pibus**

Sole Panelist

Date: November 7, 2022