

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-3526

1. The Parties

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2022. On September 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 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 (Domains By Proxy, LLC, United States) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 26, 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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Mladen Vukmir as the sole panelist in this matter on October 21, 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 Panel has determined the following non-contested facts:

- (i) The Complainant is Carvana, LLC, an Arizona limited liability company operating in the field of buying and selling used cars via e-commerce platform (Annex 5 to the Complaint);
- (ii) The Respondent is the registrant of the disputed domain name, as disclosed by the Registrar;
- (iii) The Complainant is the holder of a number of CARVANA United States trademark registrations before the United States Patent and Trademark Office (“USPTO”) (hereinafter: the “CARVANA trademarks”) (Annex 7 to the Complaint):

Trademark	Trademark Office	Reg. No. / Status	Date of registration	Class(es)
CARVANA (word)	USPTO	4328785 /registered	April 30, 2013	35, 36
CARVANACARE (word)	USPTO	4971997 /registered	June 7, 2016	36
	USPTO	4339264/ registered	May 21, 2013	35, 36
CARVANA (word)	USPTO	5022315 /registered	August 16, 2016	39
CARVANA (figurative)	USPTO	6037292 /registered	April 21, 2020	35, 36, 39

- (iv) The disputed domain name was registered on May 13, 2022 (Annex 1 to the Complaint). The disputed domain name redirects to a variety of pages (Annex 2 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant, essentially, asserts that:

- (i) The 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 registered and well-known CARVANA trademarks, and through its website created under the domain name <carvana.com>. The Complainant operates in more than 265 markets, and in 2020 sold more than 240,000 vehicles to retail customers (Annexes 5, 6 to the Complaint);
- (ii) The Complainant holds several trademark registrations for the CARVANA trademark and variations thereof in the United States;
- (iii) This case is a textbook case of cybersquatting, typosquatting and phishing. The Respondent is engaged in the unauthorized use of the Complainant's registered trademarks, as the Complainant's trademark

CARVANA is included in its entirety in the disputed domain name with simple addition of a descriptive word “outo” (a typographical error for “auto”);

(iv) Previous UDRP panels have recognized that the CARVANA trademark is a distinctive trademark that is heavily advertised and well known. The Complainant invokes earlier UDRP panel decisions in this regard;

(v) The disputed domain name wholly incorporates, and is confusingly similar to the Complainant’s CARVANA trademarks. The disputed domain name is nearly identical to the Complainant’s CARVANA trademarks, except that it adds a descriptive word “outo” (a typographical error for “auto”) to the end of the trademarks. This addition of the word “outo” (a typographical error for “auto”) to the Complainant’s CARVANA trademarks does not obviate confusion, but, in fact, enhances confusion because the term is descriptive of the Complainant’s core business;

(vi) The Respondent has no rights or legitimate interests in the disputed domain name:

- the Respondent is not authorized by the Complainant to use the disputed domain name;
- the Complainant’s trademarks and service are well known;
- there is no indication that the Respondent is known under the disputed domain name;
- the disputed domain name is identical or confusingly similar to the Complainant’s CARVANA trademarks and serves as bait to attract customers to the Respondent’s sites;
- the disputed domain name is primarily descriptive of the Complainant’s services as it incorporates the Complainant’s trade and service marks.

(vii) The disputed domain name was registered and is being used in bad faith:

- the disputed domain name is plainly designed to trade on the reputation and goodwill of the Complainant and its CARVANA trademarks for financial gain;
- the disputed domain name diverts potential users away from the Complainant’s website created under the domain name <carvana.com>, and from the Complainant’s authentic Carvana brand services;
- the disputed domain name redirects consumers to a variety of landing pages, including banking and credit companies, other automobile sales companies that are direct competitors to the Complainant, as well as landing pages that attempt to lure consumers to call “Window Support” to potentially gain control over consumers computer system or lure to consumers to other suspicious websites to distribute malware or undesirable applications.

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules and other applicable rules and principles of law pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

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

Firstly, the Panel emphasizes that it is generally accepted that ownership of a registered trademark by a complainant is generally sufficient to satisfy the threshold requirement of having the trademark rights for purposes of standing to file a UDRP case, as stated in section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant has submitted sufficient evidence to show that it is the holder of several CARVANA trademarks, which are duly registered before the USPTO as the competent trademark authority (Annex 7 to the Complaint). As such, these trademarks provide to the Complainant all the exclusive rights that are granted with such trademark registrations.

Moreover, it is well established that the threshold test for confusing similarity under the UDRP involves a reasoned but relatively straightforward comparison between the textual components of the relevant trademark and the disputed domain name. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) typically would not prevent a finding of confusing similarity under the first element (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

After performing the straightforward visual and aural comparison, it is evident to this Panel that the disputed domain name incorporates the Complainant's CARVANA trademark in its entirety, and that the same CARVANA trademark of the Complainant is clearly recognizable as such within the disputed domain name.

Beside the Complainant's CARVANA trademark, the disputed domain name includes "outo" which can only be seen as a typographical error for the word "auto" considering the Complainant's CARVANA trademark alongside its core business activity of buying and selling used cars via e-commerce platform. The Complainant's trademark and business activity of buying and selling used cars via e-commerce platform have been recognized by previous UDRP decisions as well known, used extensively and distinctive (*Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Cline Davis*, WIPO Case No. [D2020-0859](#), *Carvana, LLC v. Registration Private of Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-2256](#), *Carvana, LLC v. Privacydotlink Customer 2659160 / Gary Sandor*, WIPO Case No. [DCO2020-0056](#)).

Prior UDRP panels have found confusing similarity in a number of earlier cases based on the circumstances involving domain names comprised of a well-known trademark and an additional term (see section 1.8. of the [WIPO Overview 3.0](#)). Accordingly, the addition of the term "outo" (a misspelling of the word "auto") does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark because the Complainant's CARVANA trademark is clearly recognizable in the disputed domain name.

Regarding the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name, as a standard registration requirement, it should be disregarded under the confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

For all the foregoing reasons, the Panel holds that the disputed domain name is confusingly similar to the Complainant's CARVANA trademark within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

"(i) Before any notice to [the respondent] of the dispute, [use by the respondent] of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in

connection with a *bona fide* offering of goods or services; or

(ii) [Where the respondent] (as an individual, business, or other organization) [has] been commonly known by the domain name, even if [the respondent has] acquired no trademark or service mark rights; or

(iii) [Where the respondent is] 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.”

As noted by previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): “[...] While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

In this Panel’s view, the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a) of the Policy. The Complainant provided evidence that the disputed domain name is confusingly similar to the Complainant’s CARVANA registered and well-known trademarks. The Respondent is not authorized by the Complainant to use the disputed domain name, and there is no indication that the Respondent is known under the disputed domain name. There is no apparent relation from the records between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its CARVANA trademarks, or to apply for or use any domain name incorporating the same trademarks.

Furthermore, there is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name.

As that there is no evidence that the Respondent is in any way permitted by the Complainant to use the CARVANA trademark nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of the disputed domain name, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name which includes the Complainant’s CARVANA trademark with the addition of word “outo” (a deliberate misspelling of the word “auto”).

The Respondent has failed to provide any reply to the Complaint and accordingly failed to rebut the Complainant’s *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant’s making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent’s failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel accepts the Complainant’s arguments supported by evidence that the Respondent has registered and used the disputed domain name in bad faith. The Complainant has filed sufficient evidence to prove that its CARVANA trademarks are well known and that it is highly unlikely that the Respondent was unaware of the Complainant and its trademarks when it registered the disputed domain name.

In this Panel’s view, by registering the disputed domain name that contains the Complainant’s CARVANA trademarks the Respondent is attempting to take advantage of the Complainant’s reputation and well-known trademarks. The disputed domain name redirects consumers to a variety of landing pages, including banking and credit companies, other automobile sales companies that are direct competitors to the Complainant, as well as landing pages that attempt to lure consumers to call “Window Support” to potentially gain control over consumers computer system or lure to consumers to other suspicious websites to distribute malware or undesirable applications. Such the Respondent’s use of the disputed domain name supports a finding of bad faith within the meaning of the Policy (see sections 3.1.4 and 3.4. of the [WIPO Overview 3.0](#)).

Given the above, the Panel finds that the Respondent has registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent’s website or other online locations, by creating a likelihood of confusion with the Complainant and its CARVANA trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or other online locations. According to paragraph 4(b)(iv) of the Policy, such conduct should be considered as evidence of bad faith.

The Panel concludes that the disputed domain name has been registered and is being used in bad faith, and that the Complainant has fulfilled the third element under paragraph 4(a) 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 <carvanaouto.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: November 3, 2022