

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. Donnie Lewis
Case No. D2022-0497

1. The Parties

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

Respondent is Donnie Lewis, United States.

2. The Domain Name and Registrar

The disputed domain name <carvananearme.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 February 13, 2022. On February 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 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 Complainant on February 16, 2022, providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 18, 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 Respondent of the Complaint, and the proceedings commenced on February 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2022. On February 21, 2022, Respondent sent two informal email communications to the Center. Respondent did not submit any formal response. On March 14, 2022, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Scott R. Austin as the sole panelist in this matter on March 17, 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 following facts appear from the Complaint, as amended, and its Annexes.

Complainant is a Fortune 500 company organized under the laws of the State of Arizona with its principal place of business in Tempe, Arizona, that provides online vehicle dealership services and online vehicle financing services throughout the United States under its trademark consisting of the invented term “carvana” (the “CARVANA Mark”). Complainant delivers vehicles throughout the U.S. and also operates more than 20 CARVANA Vending Machines located in major cities in the United States. Complainant has grown rapidly since launching in January 2013 and currently operates in more than 265 markets, covering more than 73.7% of the U.S. population.

Complainant has secured ownership of a number of trademark registrations for the CARVANA Mark in the United States for its services, including but not limited to the following:

1. CARVANA (U.S. Registration No. 4,328,785), 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;
2. CARVANACARE (U.S. Registration No. 4,971,997), registered on June 7, 2016, for “extended warranty services, namely service contracts; Providing extended warranties on automobiles,” in International Class 36; and
3. CARVANA (U.S. Registration No. 5,022,315), registered on August 16, 2016, for “shipping, pickup, and delivery services for automobiles,” in International Class 39.

Since the founding of its business in 2013, Complainant has provided its services as an e-commerce platform for buying and selling used cars through its primary website accessed through its official domain name <carvana.com>, (the “CARVANA Mark Official Website”). The CARVANA Mark Official Website which hosts Complainant’s e-commerce platform averages more than 8.5 million unique visitors each month.

The disputed domain name <carvananearme.com> was registered on October 20, 2021, and as of the filing of the Complaint resolved to Respondent’s parked website displaying pages with pay-per-click (“PPC”) links used to generate revenue to Respondent by diverting users to the websites of associated third parties. The record submitted also provides probative evidence that Respondent is a manager at an automobile dealership business in competition with Complainant in Florida.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain names were registered and are being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To determine which party prevails, the Panel must decide whether Complainant has demonstrated that all the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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 has been registered and is being used in bad faith.

The Panel will address each of these required elements in turn.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See, [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for the CARVANA Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

Prior UDRP Panels have held “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” See [WIPO Overview 3.0](#), section 1.7.

The Panel finds here that the disputed domain name wholly incorporates Complainant's registered CARVANA Mark, followed by the terms “near” and “me”. The Panel notes that these additions of dictionary words trailing the CARVANA Mark does not change the fact that the CARVANA Mark is still wholly recognizable within the disputed domain name.

Prior UDRP Panels have found that the addition of other terms (whether descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not escape a finding of confusing similarity.

See, e.g. *DPDgroup International Services GmbH & Co. KG v. Whois Privacy Protection Foundation / Aurelius Mark*, WIPO Case No. [D2019-3141](#); *Carvana, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2020-1533](#) (transferring <carvanaautofinance.com> to Complainant).

Finally, prior UDRP panels have found that the applicable Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.co”) is viewed as a standard registration requirement and as such is disregarded under the first element’s confusing similarity test. Accordingly, the TLD “.com” does not avoid a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.11; see also *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

Complainant’s CARVANA Mark is readily recognizable as incorporated in its entirety into the disputed domain name, and for these reasons the Panel finds the disputed domain name confusingly similar to the CARVANA Mark in which Complainant has rights, thus satisfying the first element of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, the complainant is generally deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1. See also, *Mastercard International Incorporated v. MasterCard Brasil*, WIPO Case No. [D2009-1691](#). Respondent is in default and thus has not attempted to come forward to show any rights or legitimate interests in the disputed domain name under the Policy at paragraph 4(c).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that Respondent is not in any way associated with Complainant and has never sought nor received authorization or a license to use Complainant’s CARVANA Mark in any way or manner.

Second, according to the record submitted in this case, Respondent is not commonly known by the disputed domain name. The disputed domain name was registered on October 20, 2021, and the registrant of the disputed domain name revealed by the Registrar and Respondent in these proceedings is “Donnie Lewis”, an individual apparently located in the United States, where Complainant is located, and whose name bears no resemblance to the disputed domain name. Based on these facts, combined with the lack of evidence in the record to suggest otherwise, this Panel finds that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy paragraph 4(c)(ii).

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant’s trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See, *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#); see also *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Complainant contends that, because the disputed domain name wholly incorporates Complainant’s CARVANA Mark and simply adds the words “near” and “me” to the CARVANA Mark, Respondent has registered and continues to use the disputed domain name for the improper purpose of illegally trading upon Complainant’s goodwill to confuse, mislead, deceive and divert customers to Respondent’s site used for parked pages to generate revenue for Respondent’s commercial gain.

Prior UDRP panels have held that the use of a complainant’s mark to redirect users (e.g., *vis-à-vis* the PPC links exhibited on the disputed domain name redirecting users to third-party commercial sites) would not support a claim to rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.3. Moreover, in the instance of this proceeding, some of the links (e.g., “Budget Rent”) appear to resolve Internet users to “car deals” in direct competition with Complainant, illustrating the intent of Respondent to use the disputed domain name to capitalize on the reputation and goodwill associated with Complainant’s CARVANA Mark.

In view of the above, the Panel finds that Complainant has made out a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name when incorporating the CARVANA Mark to confuse consumers and direct them to Respondent's website for its commercial gain. Respondent has not submitted any argument or evidence to rebut Complainant's *prima facie* case. The Panel concludes, therefore, that Complainant has established, by a preponderance of the evidence that Respondent lacks rights or legitimate interests in the disputed domain name and Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant contends that its CARVANA Mark is distinctive because it is based on an invented term, and well known in its industry in the United States based on its extensive advertising and marketing. Prior UDRP panels have found the CARVANA Mark to be "a distinctive, coined term that is heavily advertised and well-known". *Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Cline Davis*, WIPO Case No. [D2020-0859](#); see also *Carvana, LLC v. Domain Administrator, Fundacion Privacy Services Ltd*, WIPO Case No. [D2020-2348](#) (finding the CARVANA Mark as "well-known in the United States" and of "well-known character").

Complainant also contends that, because Respondent has registered a disputed domain name that is confusingly similar to Complainant's well-known CARVANA Mark, incorporating the mark in its entirety, it is implausible to believe that Respondent was not aware of Complainant's CARVANA Mark when he registered the disputed domain name. This is especially true where Complainant's well-known CARVANA Mark has been used for almost ten years and is widely recognized in the United States, where Respondent is apparently located. Complainant has also provided evidence of Respondent's professional background posted on a vocational social networking site sufficient for the Panel to reasonably conclude that Respondent has worked many years in the same industry with Complainant, as a manager of retail automobile dealerships, including his current employer in Florida. The traditional auto dealership where Respondent works shares the same address that Respondent used when he registered the disputed domain name and is in competition with Complainant in its used car dealership and auto financing services industry.

UDRP Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a well-known trademark by an unaffiliated entity can, by itself, create a presumption of bad faith, which is certainly borne out here given the status of Respondent shown by Complainant to be a manager in an automobile dealership, a business in competition with Complainant in the same industry. See, [WIPO Overview 3.0](#), section 3.1.4.; see also, *Allianz SE v. Well Domains are either owned by us or Client Managed*, WIPO Case No. [D2008-0535](#).

Finally, as noted in Section B above, Complainant contends that the disputed domain name is registered and used in bad faith because the CARVANA Mark is an invented English word, and as such, third parties would not legitimately choose this name unless seeking to create a false association with Complainant to confuse and mislead consumers as Respondent has done here, in furtherance of redirecting them to parked pages with PPC links to third-party commercial websites generating revenues to Respondent for its commercial gain in violation of paragraph 4(b)(iv) of the Policy. See *Carvana, LLC v. Domain Administrator, supra*; see also *Microsoft Corporation v. Gioacchino Zerbo*, WIPO Case No. [D2005-0644](#).

Accordingly, the Panel finds that Respondent registered and used the disputed domain name in bad faith and Complainant has met its burden under the third element 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 <carvananearme.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: March 31, 2022