

## **PANEL DECISION**

### **Copart, Inc. and Copart Suomi Oy v. Purchase Inquiry Case No. DEU2023-0023**

#### **1. The Parties**

The Complainants are Copart, Inc. of United States of America, and Copart Suomi Oy of Finland, represented by Haynes and Boone, LLP, United States of America (the “Complainant”).

The Respondent is Purchase Inquiry of Poland.

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

The Registry of the disputed domain name <copart.eu> (the “Domain Name”) is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the Domain Name is EURid vzw.

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2023. On June 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 2023, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 20, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 21, 2023. In accordance with the ADR Rules, Paragraph B(3)(a), the due date for Response was July 11, 2023. The Response was not filed with the Center in due time. The Center notified the parties of Respondent Default on July 12, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on July 13, 2023. 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 ADR Rules, Paragraph B(5).

#### 4. Factual Background

The following facts are undisputed.

The Complainant offers online vehicle auction and remarketing services with operations throughout the world, including the European Union (EU). The Complainant provides *e.g.* services to process and sell salvage and clean title vehicles over the Internet using patented virtual auction technology. For 40 years, the Complainant both directly and through its subsidiaries has provided goods and services related to the resale and remarketing of vehicles. It has 175,000 vehicles up for auction every day. The Complainant has a market capitalization of over USD 37 billion and operates more than 200 locations across 11 countries, including Finland, Spain, Germany, and Ireland.

The Complainant is the owner of many trademark registrations worldwide, including, but not limited to the following trademark registrations in the EU:

- EU trademark for the word COPART, with registration number 011313541, registered on May 30, 2015;
- EU trademark for the word COPART, with registration number 005428041, registered on April 30, 2008;

The above-mentioned trademarks are hereinafter in singular referred to as the “Trademark”.

The Complainant is also the owner of the EU trademark for the COPART logo, with registration number 011177565, registered on April 30, 2015 (the “COPART Logo”);

Furthermore, the Complainant is the owner of various domain names containing the Trademarks, amongst others <copart.com>, <copart.fi>, <copart.es> and <copart.de>. The domain name <copart.com> was registered on January 29, 1996.

The Domain Name was registered on July 26, 2007, and resolves to a parked page of the registrar GoDaddy. However, on May 26, 2023, the website to which the Domain Name resolved, redirected to <call2bid.com>. On this website, services competitive to those of the Complainant were exploited (the “Website”). The Website claims to offer millions of vehicles to research and bid upon for purchase, but features several uses of the Trademark and the COPART Logo as well as a screen recording of the Complainant’s own website located at <copart.com> when users select the “bid” button on the <call2bid.com> landing page.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant contends the following.

The Domain Name is identical to the Trademark as the Domain Name contains the Trademark in its entirety. The mere addition of the country code top-level domain “.eu” should be disregarded when determining the similarity between the Domain Name and the Trademark.

Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services. The use of the Domain Name featuring another’s trademark to redirect to a website featuring competitive offerings does not amount to a *bona fide* offering of goods and services. Instead, the redirection of consumers from <copart.eu> to a website offering directly competitive services demonstrates the Respondent’s lack of rights or legitimate interests in the Domain Name.

It is clear that the Respondent is not making any non-commercial or fair use of the Domain Name. The Respondent’s purpose with registering the Domain Name is to divert consumers who are legitimately seeking the Complainant’s offering to a directly competitive website for the Respondent’s own financial benefit.

Moreover, the Respondent is not commonly known by the Trademark and the Complainant has not given consent to authorize or license Respondent's use of the Trademark. Further, there is no other evidence to suggest that the Respondent is commonly known or referred to as COPART or the Domain Name.

The Domain Name was registered and is being used in bad faith. The Respondent's use of the Domain Name to divert Internet users from the Complainant's websites to a website featuring directly competitive offerings constitutes evidence of bad faith registration and use of the Domain Name. This constitutes a finding of bad registration and bad faith use.

Furthermore, the Domain Name redirects to the Website, which displays the COPART Logo, including a video recording taken directly from the Complainant's website, located at <copart.com>. This is evidence that Respondent had knowledge of the Complainant's rights in the Trademark when registering the Domain Name.

## **B. Respondent**

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

## **6. Discussion and Findings**

In accordance with Article 4(4) of Regulation (EU) 2019/517 of the European Parliament and of the Council of March 19, 2019 on the implementation and functioning of the .eu top-level domain name (the "Regulation"), and Paragraph B(11)(d) of the ADR Rules, the Complainant, in order to succeed, is required to prove that:

- (i) The Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) The Domain Name has been registered by the Respondent without rights or legitimate interests in the name; or
- (iii) The Domain Name has been registered or is being used in bad faith.

It is generally established case law that complaints are not granted based on a respondent's failure to supply a response.

The Complainant must establish a *prima facie* case in order to succeed. The Panel finds this matter that in the absence of a response the facts as asserted by the Complainant has to be accepted and draws all reasonable inferences therefrom. This also follows from Paragraph B (10) of the ADR Rules.

### **A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law**

The Complainant has sufficiently proven to have rights in the Trademark, which is a right established by EU law.

The Domain Name consists of the Trademark in its entirety. The mere addition of the country code top-level domain ".eu" should be disregarded when determining the similarity between the Domain Name and the Trademarks.

For the foregoing reasons the Panel is satisfied that the first element as referred to in Paragraph B(11)(d)(1)(i) of the ADR Rules is met.

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

The Complainant in its Complaint and as set out above has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services. The use of the Domain Name using the Complainant's Trademarks to redirect to a website featuring competitive offerings does not amount to a *bona fide* offering of goods and services. Instead, the redirection of Internet users to a website offering directly competitive services demonstrates Respondent's lack of rights or legitimate interests in the Domain Name.

Furthermore, it is clear that the Respondent is not making any non-commercial or fair use of the Domain Name. The Respondent's purpose with registering the Domain Name is to divert consumers who are legitimately seeking the Complainant's offering to a directly competitive website for Respondent's financial benefit.

Moreover, the Respondent is not commonly known by the Domain Name and the Complainant has not given consent to authorized or licensed Respondent's use of the Trademarks. Further, there is no other evidence to suggest that the Respondent is commonly known or referred to as COPART or the Domain Name.

Certainly lacking a substantive Response, the Panel thus finds that the Respondent's use cannot be considered to be in good faith which could result in a legitimate interest.

The Panel therefore finds that the second element as referred to Paragraph B(11)(d)(1)(ii) of the ADR Rules has been satisfied.

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

According to Article 4(4) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are alternative requirements. The Panel finds that the Respondent lacks rights or legitimate interests in the Domain Name and therefore there is no need to consider also the bad faith element. However, the Panel, nonetheless, will consider the third element. The Panel reminds the Complainant that in order for a complainant to succeed on this element that registration or use in bad faith will suffice.

For purposes of Paragraph B(11)(d)(1)(iii) of the ADR Rules, the following circumstances as listed under Paragraph B(11)(f), may be evidence of the registration or use of a domain name in bad faith:

- (a) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or European Union law, or to a public body; or
- (b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:
  - (i) A pattern of such conduct by the registrant can be demonstrated; or
  - (ii) The domain name has not been used in a relevant way for at least two years from the date of registration;
  - (iii) In circumstances where, at the time of the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognized or established by national and/or European Union law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated;
- (c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
- (d) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or European Union law, or it is a name of a

public body, such likelihood arising as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or of the Respondent's, since the Respondent clearly attempts to impersonate the Complainant.

- (e) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.

The examples of bad faith mentioned above are non-exhaustive. It is for the Panel to consider whether bad faith exists.

In light of the evidence filed by the Complainant, the Panel finds that the Respondent was aware of the existence of the Complainant's activities and rights at the time the Respondent registered the Domain Name. The Respondent used the Domain Name to divert Internet users from the Complainant's website to a website, featuring directly competitive offerings. This constitutes evidence of bad faith registration and use in bad faith of the Domain Name.

Also, given the fact that the Domain Name's resolving website uses the Trademark and the COPART Logo and a video recording taken directly from the Complainant's website located at <copart.com>, and claims to offer competitive vehicle auction services, proves the Respondent had actual knowledge of the Complainant's rights in the Trademark and COPART Logo when the Respondent registered the Domain Name, which is adequate evidence of bad faith.

Finally, although the lack of a formal response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the use of the Domain Name by the Respondent is in bad faith.

Accordingly, the Panel finds that the Domain Name is being used in bad faith and as such the third element is satisfied.

## 7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the Domain Name, <copart.eu>, be transferred to the Complainant, Copart Suomi Oy <sup>1</sup>.

*/Willem J.H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: July 22, 2023

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<sup>1</sup> (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph B(12)(d) of the ADR Rules.

(ii) This Complainant satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517 as it is established in the EU.