

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. 杨智超 (Zhi Chao Yang)
Case No. D2023-1716

1. The Parties

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

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Names and Registrar

The disputed domain names <carcanaauto.com>, <carvaanaauto.com>, <carvanaato.com>, <carvanaaauo.com>, <carvanaautto.com>, <carvanaauuto.com>, and <csrvanaauto.com> are registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 2023 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 in English on April 20, 2023.

On April 20, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 20, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 25, 2023.

The Center appointed Jonathan Agmon as the sole panelist in this matter on June 12, 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 Rules, paragraph 7.

4. Factual Background

The Complainant is a leading e-commerce platform for buying and selling used cars in the United States. Its business includes online vehicle dealership services and online vehicle financing services, which it promotes and operates under its website "www.carvana.com" and under its CARVANA marks. It delivers vehicles around the U.S. and operates more than 33 car vending machines in major U.S. cities. The company was launched in January 2013 and operates in more than 316 markets within the U.S., covering around 80% of the U.S. population.

The Complainant is the owner of the CARVANA word and figurative trademarks in the United States, including but not limited to:

- United States Patent and Trademark Office ("USPTO") Registration No. 4328785 for CARVANA, registered on April 30, 2013;
- USPTO Registration No. 86868920 for CARVANA, registered on August 16, 2016; and
- USPTO Registration No. 6037292 for  registered on April 21, 2020.

The Complainant provided evidence that the Respondent registered the disputed domain names on various dates on July 4, August 29, and October 6, 2022. The disputed domain names resolve to parked webpages with what appear to be per-per-click ("PPC") advertisement links.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's registered CARVANA mark as the Respondent has intentionally registered seven confusingly similar disputed domain names that incorporate the Complainant's CARVANA mark in its entirety or a misspelt version of the mark, together with an additional term "auto" or a misspelt version of it.

The Complainant also argues that the Respondent lacks any rights or legitimate interests in the mark or the disputed domain names as it has not licensed or permitted the Respondent to use any of its trademark or register the disputed domain names and that the Respondent registered and continues to use the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Consideration - Language of the Proceeding

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for all the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following main reasons:

- (i) the Complainant is in the United States and is unable to communicate in the Chinese language;
- (ii) translating the Complaint into Chinese would cause an undue burden on the Complainant and unnecessarily delay the proceeding; and
- (iii) the disputed domain names and the websites to which the disputed domain names resolve are in the English language, suggesting the Respondent is conversant in English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case”. (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain names resolve to websites in English, that the Respondent has not participated in this proceeding, and that all of the Center’s communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceedings are conducted in a timely and cost-effective manner. In addition, in the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

6.2 Substantive Matters

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the CARVANA registered trademark.

The disputed domain names comprise the Complainant’s CARVANA mark in its entirety or a misspelt version of the mark with the descriptive word “auto” or a misspelt version thereof. It is well established that where the trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing

similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. It is also well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The Complainant's mark is clearly recognizable in the disputed domain names. Thus, the disputed domain names, which in this case incorporate the Complainant's mark in its entirety or an obvious misspelling of the mark together with the descriptive word "auto" or typos of "auto", are all therefore typosquatting attempts by the Respondent, which do not avoid a finding of confusingly similarity between the Complainant's mark and the disputed domain names.

Further, it is well established that the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and in this case it is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain names (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the CARVANA mark long before the dates that the disputed domain names were registered and that the Complainant is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by any of the disputed domain names (see [WIPO Overview 3.0](#), section 2.3).

The Respondent's websites under the disputed domain names resolve to parked webpages which use the Complainant's CARVANA mark and display what appear to be comprising PPC links purporting to offer links with titles such as "Used Cars online", "Carvana Cars for Sale" and "Buying Cars Online" and which lead to websites offering services which compete with those offered by the Complainant. It has been held by prior UDRP panels that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), section 2.9.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which would be sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain names in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domains names long after the Complainant registered its CARVANA trademark. Given the good will and distinctiveness of the Complainant's mark in the field of automobile trading, and the fact that the Complainant's trademarks have been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its CARVANA mark prior to the registration of the disputed domain names.

The disputed domain names incorporate the Complainant's CARVANA mark in its entirety or an obvious misspelling of the CARVANA mark with the addition of the word "auto" or typos of "auto", which, given the circumstances of this case, the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that when a disputed domain name contains an obvious misspelling of a registered mark, "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to create a likelihood of confusion with a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

Moreover, the Respondent's websites under the disputed domain names resolve to parked webpages, which use the Complainant's CARVANA mark and display what appears to be comprising PPC links specifically purporting to offer links with titles such as "Used Cars Online", "Carvana Cars for Sale" and "Buying Cars Online" that lead to websites offering services which compete with those offered by the Complainant. Such use of the disputed domain names indicates that the Respondent has targeted the Complainant and its trademark and is capitalizing on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users, which are clear indications of bad faith registration and use.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which has been considered by the Panel.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including the registration of the disputed domain names long after the registration of the Complainant's trademark, the typosquatting nature of most of the disputed domain names and their confusing similarity with the Complainant's trademark, the Respondent's use of the disputed domain names and the failure of the Respondent to submit a Response, and the fact that there is no plausible good faith use the Respondent can put the disputed domain names to, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under 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 names, <carcanauto.com>, <carvaanauto.com>, <carvanaato.com>, <carvanaauo.com>, <carvanaautto.com>, <carvanaauuto.com>, and <csrvanaauto.com>, be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: June 26, 2023