

## **ADMINISTRATIVE PANEL DECISION**

Copart, Inc. v. Andrew George Lindner  
Case No. DAU2023-0030

### **1. The Parties**

The Complainant is Copart, Inc., United States of America (“United States”), represented by Haynes and Boone, LLP, United States.

The Respondent is Andrew George Lindner, Australia, self-represented.

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

The disputed domain name <copart.com.au> is registered with Synergy Wholesale Accreditations Pty Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2023. On June 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 29, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 4, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was July 24, 2023. The Response was filed with the Center on July 23, 2023.

The Center appointed John Swinson as the sole panelist in this matter on July 26, 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 United States company that provides online used car auction services.

The Complainant's primary website is located at <copart.com>.

The Complainant owns Australian Registered Trade Mark No. 1247000 for COPART that was filed on June 18, 2008, and that was entered on the Register on January 27, 2009.

The Respondent is an individual with an address in Tasmania, Australia.

The disputed domain name was registered by the Respondent on December 17, 2015.

The Respondent created a website at the disputed domain name in 2017 that just included the title "copart".

In 2022, and today, the website at the disputed domain name included only the following text:

"COPART AUSTRALIA - CAR PARTS

Visit banggood.com.au for online car parts and accessories - the best bang for your buck at great prices.

Visit lightinthebox.com.au for online car parts and accessories - the best bang for your buck at great prices.

Or

Proceed to online competitions at lottos.com.au for a fun hobby that has the potential for great prizes!"

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent uses the disputed domain name for a pay-per-click website that offers services that are competitive to the Complainant's services.

The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, the Respondent is not making a legitimate and noncommercial or fair use of the disputed domain name, and the Respondent has never been commonly known as or referred to as COPART, or any variation thereof. Rather, the demonstrated purpose and use of the disputed domain name is to send the Complainant's customers to websites featuring directly competitive vehicle part sale services to the Complainant's own vehicle part sale services for the Respondent's own financial gain.

##### B. Respondent

In summary, the Respondent makes the following submissions:

At the time of registration, it was understood that a ".com.au" website could not sit idle and monetisation was a common and acceptable practice.

The disputed domain name was registered in 2015 with the Respondent unaware of any trade mark claims.

The Respondent's website at the disputed domain name complied with .au Domain Administration Limited ("auDA") Policies concerning monetisation.

The "copart.com" mark or website is clearly not identical or confusingly similar to the disputed domain name or the website at the disputed domain name.

The Complainant has not registered any trading name or business name in Australia using “Copart” and is an unknown vehicle auction company in Australia.

## **6. Discussion and Findings**

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trade mark 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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s name, trade mark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns a registered trade mark for COPART as discussed in section 4 above.

Typically and as is appropriate in this case, it is permissible to disregard respectively the Top and Second Level Domains, “.com.au”, as a functional component of the domain name system.

Accordingly, the disputed domain name is identical to the Complainant’s COPART trade mark.

The Complainant succeeds on the first element of the Policy.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the subject matter of the dispute, the respondent’s *bona fide* use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trade mark or service mark rights; or

- (iii) 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 trade mark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and the burden of production will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#).

Without more, use of a domain name to generate revenue through pay-per-click links is generally not considered to be a *bona fide* offering of goods or services such as to give rise to rights or legitimate interests in a domain name. However, where the domain name consists of a dictionary word and is used to host pay-per-click links genuinely related to the dictionary meaning of the word, and not to trade off the complainant's trade mark, respondent rights or legitimate interests can arise. This is especially so where the domain name has been used for pay-per-click links for a long period of time. See *B.S.A. v. Internet Products Sales & Services Pty Ltd*, WIPO Case No. [DAU2022-0019](#).

There is no evidence before the Panel that "copart" is a dictionary term. The website at the disputed domain name is used for links for car parts and lotteries. In light of the discussion below regarding the third element, the Panel finds that use this does not amount to a *bona fide* offering of goods or services to give rise to rights or legitimate interests in the disputed domain name under the Policy. See, for example, *Glanbia Performance Nutrition Limited v. Web Media Pty Ltd*, Case No. [DAU2021-0021](#); and *A2 Hosting, Inc. v. ASOP Investments Pty Ltd*, WIPO Case No. [DAU2023-0019](#) ("the Panel finds that the Respondent is unable to rely upon its monetisation of the disputed domain name to establish rights or legitimate interests in the disputed domain name for the purposes of the Policy.")

The Complainant succeeds on the second element of the Policy.

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

Unlike the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

The website at the disputed domain name includes the heading "car parts" and text "online car parts and accessories". There is no obvious connection between the term "copart" and car parts, other than that COPART is the Complainant's name and trade mark and that the Complainant conducts auctions for used cars. This suggests that the Respondent was aware of the Complainant.

The Respondent provided no explanation why he selected the disputed domain name in 2015 when he registered it (other than that it was available), provided no explanation why he included links titled "online car parts and accessories" on the website at the disputed domain name (particularly in the circumstance that these links, according to the Respondent, were to "online marketplaces that have a vast cross section of sales, such as clothes, electronics and more"), and provided no explanation as to why he also included advertisements for lotto.

In a Google search from Australia conducted by the Panel, the Complainant's websites and social media accounts (and information about the Complainant, such as on Wikipedia) fill the first page of the Google

search results. If the Respondent had searched the Australian Trade Marks Register before registering the disputed domain name, the Complainant's trade mark registration easily would have been found.

The Respondent's submissions in respect of bad faith focus on registration, not use. In the circumstances of this case, the Panel finds that the Respondent knew or should have known of the Complainant and its trade mark rights.

The Panel also considers whether the Respondent's use of the disputed domain name was in bad faith. The disputed domain name is identical to the Complainant's trade mark, and there is no evidence before the Panel that suggests that the disputed domain name has any meaning other than as a source identifier of the Complainant. Based on the Respondent's use of the disputed domain name discussed above, the Panel concludes that it was more likely than not that the Respondent used the disputed domain name in 2022 and thereafter to divert Internet users looking for the Complainant's website to the Respondent's website. This constitutes bad faith use of the disputed domain name.

The Respondent asserts that auDA Policies permit domain monetisation. This does not assist the Respondent here. The auDA domain monetisation policies are subject to the auDRP and to other legal rights, such as trade mark rights, and other Australian laws such as those prohibiting misleading and deceptive conduct.

The Complainant succeeds on the third element of the Policy.

## **7. Decision**

For all 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 <copart.com.au> be transferred to the Complainant.

*/John Swinson*

**John Swinson**

Sole Panelist

Date: August 9, 2023