

ADMINISTRATIVE PANEL DECISION

**Carvana, LLC v. PrivacyDotLink Customer 4611466 / Domain Admin
Case No. D2022-0560**

1. The Parties

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

The Respondent is PrivacyDotLink Customer 4611466, Cayman Islands, United Kingdom/ Domain Admin, Georgia.

2. The Domain Name and Registrar

The disputed domain name <cavanacar.com> is registered with GoDaddy Online Services Cayman Islands Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 18, 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 the Complainant on February 23, 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 amended Complaint on February 25, 2022. In response to a request for clarification by the Center, the Complainant clarified the mutual jurisdiction on February 23, 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 the Respondent of the Complaint, and the proceedings commenced on March 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2022. On February 23 and 24, and March 1 and 16, 2022, the Center received email communications from someone claiming to be the registrant of the disputed domain name.

The Center appointed Luca Barbero as the sole panelist in this matter on April 20, 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 Complainant operates an e-commerce platform for buying and selling used cars. Established in 2013, it promotes and renders its online vehicle dealership services and online vehicle financing services throughout the United States under the trademark CARVANA and through its primary website "www.carvana.com". The Complainant has been included amongst the Fortune 500 list of companies.

The Complainant is the owner of several trademark registrations for CARVANA, including the following:

- United States trademark registration No. 4328785 for CARVANA (word mark), filed on April 11, 2011, and registered on April 30, 2013, in international classes 35 and 36;
- United States trademark registration No. 5022315 for CARVANA (word mark), filed on January 7, 2016, and registered on August 16, 2016, in international Class 39;
- United States trademark registration No. 6037292 for CARVANA (figurative mark), filed on November 13, 2019, and registered on April 21 2020, in international classes 35, 36 and 39.

The Complainant is also the owner of the domain name <carvana.com>, which was registered on October 18, 2003, and is used by the Complainant to promote its services under the trademark CARVANA.

The disputed domain name <cavanacar.com> was registered on September 19, 2021, and has been pointed to a parking page with pay-per-click links referred to automobile related services.

5. Parties' Contentions

A. Complainant

The Complainant contends that disputed domain name is confusingly similar to the trademark CARVANA in which the Complainant has rights as it reproduces the trademark in its entirety, only omitting the letter "r" and adding the word "car", which is descriptive of the Complainant's core industry.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way associated with the Complainant and has never sought nor received authorization or license to use the Complainant's trademark CARVANA in any way or manner.

The Complainant further underlines that the Respondent is not commonly known by the disputed domain name and that, upon information and belief, the Respondent has not sought or procured any registrations for any tradenames, corporations, or trademarks with any governmental or business authority for "carvana" or any variation thereof.

Moreover, the Complainant claims that the Respondent is not making any legitimate noncommercial use of the disputed domain name since its use appears to be purely of commercial nature. The Complainant highlights that the Respondent has adopted and continued to use the disputed domain name for the illegal and improper purpose of: (i) trading upon the Complainant's goodwill to confuse, mislead, deceive and divert customers; and to (ii) intentionally tarnish and dilute the Complainant's valuable and well-known trademark.

Lastly, the Complainant highlights that the trademark CARVANA is an invented English word, and as such, third parties would not legitimately choose this name (or a typo-variation thereof) unless seeking to create an impression of an association with the Complainant.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent registered the disputed domain name to trade on the reputation and goodwill of the Complainant and its trademark CARVANA for financial gain, diverting potential users to its website (and/or the websites of associated third parties) to generate traffic and sales commissions for its own commercial benefit.

The Complainant emphasizes that the Respondent registered the disputed domain name, which wholly incorporates a typo variation of the Complainant's trademark CARVANA and the Complainant's primary domain name <carvana.com>, to redirect Internet users to parked pages with links to third-party commercial websites.

The Complainant submits that the Respondent also acted in opportunistic bad faith at the time of registering the disputed domain name, since not only the Respondent lacks any legitimate rights in the trademark CARVANA, but it also registered the disputed domain name purposely to benefit and trade upon the Complainant's notoriety and goodwill for commercial gain.

Lastly, the Complainant asserts that, considering the Complainant registered the disputed domain name years after the Complainant had first registered its trademark CARVANA, the Respondent must have been well aware of the Complainant and its services at the time of registering the disputed domain name and clearly acted in bad faith for the purpose of gaining financially from such association, which further proves the Respondent's bad faith intentions.

B. Respondent

The Respondent did not reply to the Complainant's contentions. Email communications were sent from a someone claiming to be the registrant of the disputed domain name and indicating that it was willing to transfer it to the Complainant.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a 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 it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark CARVANA based on the trademark registrations cited under section 4 above and the printouts of the trademark details taken from the USPTO online trademark database submitted as Annex 7 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable

within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of terms or even letters or numbers does not prevent a finding of confusing similarity under the first element (sections 1.8 and 1.9 of the [WIPO Overview 3.0](#)). Furthermore, as stated in Section 1.9 of the WIPO Overview of [WIPO Overview 3.0](#), “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”.

In the case at hand, the Panel notes that the disputed domain name reproduces the trademark CARVANA with the sole omission of the letter “r” and the addition of the descriptive term “car”. Moreover, as stated in a number of prior decisions and in section 1.11.1 of the WIPO Overview, 3.0, the generic Top-Level Domain “.com” can be disregarded being a standard registration requirement.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent’s rights or legitimate interests in respect of the domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with previous UDRP decisions, it is sufficient that the complainant show a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production on the respondent. If the respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see, *i.e.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd*).

In the case at hand, by not replying to the Complainant’s contentions, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks.

Furthermore, there is no indication before the Panel that the Respondent is commonly known by the disputed domain name, has made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, or that it intends to make a legitimate, noncommercial or fair use of the disputed domain name.

As highlighted above, the Respondent has pointed the disputed domain name to a website displaying pay-per-click links related to cars and vehicle parts.

According to Section 2.9 of the [WIPO Overview 3.0](#), “Applying UDRP paragraph 4(c), panels have found 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. Panels have additionally noted that respondent efforts to suppress PPC advertising related to the complainant’s trademark (*e.g.*, through so-called ‘negative keywords’) can mitigate against an inference of targeting the complainant. Panels have recognized that the use of a domain name to

host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark. In cases involving a website that is not predominantly a 'typical' parked or PPC site (e.g., a blog, forum, or other informational page), where other clear, non-pretextual indicia of respondent rights or legitimate interests are present, some panels have been prepared to accept the incidental limited presence of PPC links as not inconsistent with respondent rights or legitimate interests”.

In the case at hand, the disputed domain name, clearly confusingly similar to the Complainant's trademark, has been pointed to a website displaying pay-per-click links related to the Complainant's market niche and redirecting users to third-party websites promoting also services which compete with the ones of the Complainant. The Panel finds that such use of the disputed domain name does not amount to a *bona fide* offering of goods or services. Moreover, the Respondent's use does not amount to a legitimate noncommercial or fair use, as the Respondent has clearly aimed at gaining pay-per-click revenues.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to bad faith at the time of the registration, the Panel finds that, in light of i) the prior registration and use of the Complainant's trademark CARVANA in connection with the Complainant's services, ii) the distinctive and well-known character of the trademark, recognized also in prior WIPO decisions, iii) the confusing similarity of the disputed domain name with the Complainant's trademark and iv) the Respondent's pointing of the disputed domain name to a website with click-through advertising to third party websites offering automobile related services that also compete with the Complainant, the Respondent likely registered the disputed domain name having the Complainant's trademark in mind.

In light of the use of the disputed domain name described above, the Panel also finds that the Respondent intentionally attempted to attract Internet users to its website by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of its website, according to paragraph 4(b)(iv) of the Policy. Moreover, in all likelihood, the Respondent profits by earning pay-per-click revenues from the disputed domain name's redirection (see *inter alia* *Manheim Auctions Inc. v. Whois ID Theft Protection*, WIPO Case No. [D2006-1044](#), *Fry's Electronics, Inc v. Whois ID Theft Protection*, WIPO Case No. [D2006-1435](#), *Barry D. Sears, Ph.D. v. YY / Yi Yanlin*, WIPO Case No. [D2007-0286](#)).

In addition, in light of the fact that the disputed domain name entirely reproduces the Complainant's trademark CARVANA except for the omission of one letter “r”, with the addition of a descriptive term related to the Complainant's sector, the Panel finds that this is a clear case of typosquatting, which is a further circumstance evidencing bad faith. See *Manheim Auctions Inc. v. Whois ID Theft Protection*, WIPO Case No. [D2006-1044](#) and *Allied Building Products Corp v. Alliedbuildingproducts.com c/o Whois Identity Shield*, WIPO Case No. [D2006-0833](#) (“it is therefore a reasonable inference from this that the Respondent knew of the Complainant's business and wanted to exploit the name to divert Internet traffic from it, probably to benefit from pay-by-click arrangements with alternative suppliers”).

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to 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 name <cavanacar.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: May 5, 2022