

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. Agbortoko Arreychuck, Easythingz
Case No. D2022-1318

1. The Parties

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

The Respondent is Agbortoko Arreychuck, Easythingz, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <carvanausa.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2022. On April 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to the Center’s request to amend the Complaint, the Complainant filed an amended Complaint on April 28, 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 April 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 20, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on June 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 provides and operates a leading e-commerce platform for trading used cars under its mark CARVANA. The Complainant delivers vehicles throughout the United States and also operates more than 30 CARVANA Vending Machines located in major cities in the United States. The Complainant has grown rapidly since launching in January 2013 and currently operates in more than 311 markets, covering more than 81% of the US population. In 2021 alone, the Complainant sold more than 425,000 vehicles to retail customers with used vehicle sales revenue exceeding USD 12.8 billion.

The Complainant owns a number of trademark registrations of the mark CARVANA, including US Registration No. 4,328,785, filed on April 11, 2011, and 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.

The Complainant is the registrant of the domain name <carvana.com> which addresses its e-commerce platform enabling access to the products and services of the Complainant.

The disputed domain name was registered on September 21, 2021 and currently displays an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's mark CARVANA, since the disputed domain name wholly incorporates the Complainant's mark and simply adds the geographical term “usa”.

The Complainant further asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized by the Complainant to use the disputed domain name, and there is no evidence suggesting that the Respondent is known under the disputed domain name.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith. The registration of the disputed domain name was plainly designed to trade on the reputation and goodwill of the Complainant and its registered CARVANA mark. Because of the fame and distinctiveness of the CARVANA marks, the Respondent must thus have known of the Complainant and its registered marks when registering the disputed domain name. The disputed domain name currently displays an inactive website which previous Panel decisions have found to constitute bad faith use.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the 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.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that under the Policy, the disputed domain name <carvanausa.com> is confusingly similar to the Complainant's registered trademark CARVANA because it contains the mark in its entirety. The addition of the geographical term "usa" does not dispel a finding of confusing similarity in the present case. The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. Moreover, the Panel finds that the composition of the disputed domain name is such that it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain,

Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's CARVANA mark, and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that it chose a domain name, which based on its composition could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. However, as first stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and repeated in many subsequent decisions under the UDRP: "the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith." See section 3.3 of the [WIPO Overview 3.0](#)

Noting that the disputed domain name incorporates the Complainant's distinctive trademark CARVANA, together with the common acronym "usa" and the gTLD ".com", that no Response has been filed and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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 <carvanausa.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: July 12, 2022