

ADMINISTRATIVE PANEL DECISION

Carvana, LLC v. Domains By Proxy, LLC / Hilowzone, Farzin Vafaiezhadeh
Case No. D2022-2225

1. The Parties

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

The Respondent is Domains By Proxy, LLC, U.S. / Hilowzone, Farzin Vafaiezhadeh, U.S.

2. The Domain Names and Registrar

The disputed domain names <carvanala.com>, <carvanaoc.com>, <lacarvana.com> and <occarvana.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2022. On June 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 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 amendment to the Complaint on July 7, 2022.

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 of the Complaint, and the proceedings commenced on July 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2022. The Respondent did not submit any formal response. The Center received the Respondent’s communications by email on July 16, 2022 and July 30, 2022. On August 12, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Anne Gundelfinger as the sole panelist in this matter on August 22, 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 launched in 2013, and since then has become a leading e-commerce platform in the United States for buying and selling used cars. The Complainant is a Fortune 500 company that promotes and provides its online vehicle dealership services and online vehicle financing services throughout the United States under its CARVANA and CARVANA-based marks (hereafter the “Mark” or “CARVANA Mark”) and through its primary website found under the domain name <carvana.com>. The Complainant delivers vehicles throughout the U.S. and operates more than thirty CARVANA-branded “vending machines” located in major cities in the United States. The Complainant has grown rapidly since its launch and has sold more than 425,000 vehicles to retail customers with used vehicle sales revenue exceeding USD12.8 billion. The Complainant’s website averages more than 17.8 million unique visitors each month.

The Complainant first used the CARVANA Mark in January 2013 and holds several U.S. trademark registrations for the Mark, as follows:

- CARVANA, U.S. Registration No. 4,328,785, registered in April 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;
- CARVANACARE, U.S. Registration No. 4,971,997, registered in June 2015, for “Extended warranty services, namely service contracts; Providing extended warranties on automobiles” in International Class 36;
- CARVANA, U.S. Registration No. 5,022,315, registered in August 2016, for “Shipping, pickup, and delivery services for automobiles” in International Class 39; and
- CARVANA (stylized), U.S. Registration No. 6,037,292, registered in April 2020, for “Online dealership services featuring automobiles” in International Class 35, and “Online financing services in the field of automobile loans; extended warranty services, namely, service contracts; providing extended warranties on automobiles” in International Class 36, and “Shipping, pickup, and delivery services for automobiles” in International Class 39.

The Respondent registered all four of the disputed domain names <carvanala.com>, <carvanaoc.com>, <lacarvana.com>, and <occarvana.com> on April 8, 2022, using the privacy service Domains by Proxy to shield its identity. All four-domain names resolve to parking pages featuring apparent pay-per-click (PPC) links relating to recreational vehicle, motor home, and trailer rentals, car and home insurance, movers, and restaurants, among other things.

5. Parties’ Contentions

A. Complainant

The Complainant contends that its CARVANA Mark is coined and highly distinctive and is well-known due to the Complainant’s nationwide operations, substantial sales, and heavy investment in marketing and advertising to build consumer recognition. The Complainant further contends that the disputed domain names are confusingly similar to its CARVANA Mark because the disputed domain names wholly incorporate the Mark combined with either “la” or “oc” at the front end or back end of the domain name, which the Complainant argues are, respectively, references to Los Angeles and Orange County.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names, and that the disputed domain names have been registered and are being used in bad faith.

Specifically, the Complainant asserts *inter alia* that (a) the Complainant's Mark is coined, highly distinctive, and well known and that the Respondent must therefore have known of and intentionally targeted the Complainant's Mark in registering and using the disputed domain names, (b) the Complainant has given no authorization or license for registration or use of the disputed domain names, (c) the Respondent is not commonly known by the disputed domain names, and (d) the Respondent's use of the disputed domain names for parking pages containing PPC links fails to establish rights or legitimate interests and also demonstrates the Respondent's bad faith registration and use.

B. Respondent

The Respondent did not submit a formal response to the Complaint but did send an email to the Center on July 16, 2022 inquiring what could be done to "unlock the dispute" followed by an email on July 30, 2022, stating "According to 'WIPO' Rules We are entitled to keep Following domain: carvanala.com carvanaoc.com lacarvana.com occurvana.com. Compline [sic] is baseless". The Center accepted these emails as the informal Respondent's Response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements to be successful in this action: (i) the disputed domain names are identical or confusingly similar to trademarks or service marks in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

All four disputed domain names wholly incorporate the Complainant's established and highly distinctive CARVANA Mark along with either "la" or "oc" at the front end or back end of each domain name. The Panel agrees with the Complainant's contention that Internet users would likely understand these two letter strings as references either to Los Angeles or Orange County, given that "la" is a very common abbreviation of "Los Angeles" and "oc" is a very common abbreviation of "Orange County".

It is well-established that the addition of other terms (whether generic, descriptive, geographical, pejorative, meaningless, or otherwise) to a complainant's mark does not prevent a finding of confusing similarity between that mark and a domain name that wholly incorporates that mark. See, section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and cases cited therein. See also, *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#); *Accor v. WhoisGuard, Inc. / Bill Bro*, WIPO Case No. [D2018-2329](#); and *Carvana, LLC v. Nick Dillman*, WIPO Case No. [D2020-1483](#). Similarly, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is generally disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that all four of the disputed domain names are confusingly similar to the Complainant's Mark and that the first element of the test is therefore satisfied.

B. Rights or Legitimate Interests

It is well established that a complainant must present a *prima facie* case in relation to the second element of the Policy, not mere allegations. Once a *prima facie* showing is made, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the disputed domain name. This burden-shifting is appropriate given that the respondent is often the only party with access to evidence of its own rights or legitimate interests. See, section 2.1 of the [WIPO Overview 3.0](#) and cases cited therein.

Here, the Complainant has asserted that it has no connection or affiliation with the Respondent and has given no authorization for the Respondent's use of the disputed domain names. The Complainant has

submitted substantial evidence, which the Panel has independently verified, that the Respondent is using all four disputed domain names for parking pages featuring PPC links relating to recreational vehicle, motor home, and trailer rentals, car and home insurance, movers, and restaurants, among other things. It is the consensus view that such a PPC use is neither a fair use nor a *bona fide* offering of goods or services under the Policy and therefore does not establish rights or legitimate interests. See e.g., *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#). See also section 2.9 of the [WIPO Overview 3.0](#) and cases cited therein.

As noted above, the Respondent did not file a formal response to the Complaint but did send an email to the Center stating as follows: “According to ‘WIPO’ Rules We are entitled to keep Following domain: carvanala.com carvanaoc.com lacarvana.com occurvana.com. Compline [sic] is baseless.” The Panel has duly considered this argument but notes that the Respondent provided no rationale for, and no evidence in support of, its bald statement that it is entitled to the disputed domain names. Accordingly, the Respondent has not met its evidentiary burden and the Panel sees no reason in this case to abandon the consensus view that PPC use fails to establish rights or legitimate interests.

Accordingly, the Panel concludes that the second element of the test is satisfied.

C. Registered and Used in Bad Faith

The third element of the test requires a showing that the disputed domain names have been registered and are being used in bad faith.

The Panel agrees that the Complainant’s CARVANA Mark is coined and highly distinctive. Moreover, it has been widely used and heavily promoted throughout the United States for nearly a decade. Accordingly, the evidence supports the Complainant’s contention that the Respondent knew of and intentionally chose to incorporate the Complainant’s Mark in the disputed domain names in order to drive traffic to its parking pages. These webpages all contain PPC links for recreational vehicle, motor home, and trailer rentals, car and home insurance, movers, and restaurants, among other things. The Panel independently verified the presence of these PPC links, and moreover followed the links which in some cases led to websites of online car dealers that are competitors of the Complainant.

Given the foregoing, there can be little doubt that the Respondent knew of, and is specifically targeting the Complainant’s Mark and is doing so for commercial gain. Accordingly, the Panel concludes that the disputed domain names were registered and have been used in bad faith. See, paragraph 4(b)(iv) of the UDRP; sections 3.1, 3.1.4, and 3.5 of the [WIPO Overview 3.0](#); *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service*, WIPO Case No. [D2011-1753](#). This conclusion is further bolstered by the fact that the Respondent used a privacy shield to hide its identity. See section 3.6 of the [WIPO Overview 3.0](#).

The Panel therefore concludes that all four of the disputed domain names were registered and have been used in bad faith and that the third element of the test is satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that all four of the disputed domain names <carvanala.com>, <carvanaoc.com>, <lacarvana.com>, and <occarvana.com> be transferred to the Complainant.

/Anne Gundelfinger/

Anne Gundelfinger

Sole Panelist

Date: August 30, 2022