

## **ADMINISTRATIVE PANEL DECISION**

**Carvana, LLC v. Domain Administrator, Fundacion Privacy Services LTD  
Case No. D2022-4636**

### **1. The Parties**

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

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <carvaned.com> is registered with Media Elite Holdings Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 3, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 10, 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 December 12, 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 December 12, 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 December 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on January 13, 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 provides since 2013 an e-commerce platform for buying and selling used cars as well as providing vehicle financing services throughout the United States under the CARVANA trademark.

The Complainant, in addition to the domain name <carvana.com>, is the owner of trademark registrations for CARVANA, amongst others, United States Registration No. 4,328,785 for CARVANA, 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 disputed domain name <carvned.com> was registered on October 11, 2022 and presently resolves to various landing webpages some of which are offering to install suspicious software and others are blocked due to the risk of phishing attacks.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts to be a Fortune 500 company that promotes and renders online vehicle dealership services and online vehicle financing services throughout the United States under its well-known CARVANA trademark, currently operating in more than 266 markets, covering more than 81 percent of the United States population.

The Complainant further states to have sold more than 425,237 vehicles in 2021 to retail customers with used vehicle sales revenue exceeding USD 9.9 billion. According to the Complainant, its website averages more than 17.8 million unique visitors each month.

Also according to the Complainant, this is a typical case of typosquatting and phishing, having the Respondent engaged in the unauthorized use of the Complainant's registered trademark, as the disputed domain name contains a misspelling of the Complainant's CARVANA trademark with the mere replacement of the final “a” for “ed”.

Moreover, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent is not in any way associated with the Complainant and has never sought nor received authorization or a license to use the Complainant's valuable, famous, and distinctive CARVANA trademark in any way or manner;
- (ii) the Complainant's trademark is distinctive and well-known, as already recognized by previous UDRP panels (*Carvana, LLC v. Nick Dillman*, WIPO Case No. [D2020-1483](#); *Carvana, LLC v. 石磊 (Shilei)*, WIPO Case No. [D2020-2450](#); *Carvana LLC v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Demis Teril*, WIPO Case No. [D2020-2451](#); *Carvana, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2020-3403](#));
- (iii) the Respondent is not commonly known by the disputed domain name;
- (iv) the Respondent has not used, nor prepared to use, the disputed domain name in connection with a *bona fide* offering of goods or services, being the disputed domain name used by the Respondent to resolve to a variety of landing pages that alert the consumer of security concerns and attempt to gain phishing login credentials to give account access to unauthorized users; and
- (v) given that the Complainant's trademark is inherently distinctive, with no generic meaning, enjoying a reputation, it is clear that the disputed domain name carries a risk of implied affiliation and cannot constitute fair use.

Lastly, the Complainant submits that the Respondent both registered and is using the disputed domain name in bad faith in accordance with Paragraph 4(a)(iii) of the Policy, having clearly registered the disputed

domain name to trade on the reputation and goodwill of the Complainant and its CARVANA trademark for financial gain, having the Respondent utilizing the disputed domain name to divert potential users (a) away from the Complainant's primary website at the domain name <carvana.com>, (b) away from the Complainant's authentic CARVANA trademark services, and (c) toward the Respondent's website to generate traffic and sales commissions for its own commercial benefit and to redirect to sites where consumers may precede to correct phishing scams disguised as "security" alerts, where nefarious actors could potentially gain illegal access to their computer systems and/or identity, in a clear attempt of commercial gain by misleading online users.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

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

The Complainant has established its rights in the registered CARVANA trademark.

The Panel finds that the disputed domain name contains sufficiently recognizable aspects of the Complainant's CARVANA trademark with the mere replacement of the final "a" for "ed". 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 the complainant's trademark and the disputed domain name". The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.9.

The first element of the Policy has therefore been established.

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

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not been commonly known by the disputed domain name, and neither has the Respondent been in any way associated with the Complainant, nor has it ever sought or received authorization or a license to use the Complainant's well-known CARVANA trademark in any way or manner.

In addition to that, the lack of any good faith use of the disputed domain which presently resolves to various landing webpages some of which are offering to install suspicious software and others are blocked due to a risk of phishing attacks, does not characterize an evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the Complainant that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

### **C. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainants who are the owner of a trademark relating to the disputed domain name or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the Complainants' 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.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

(i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, not having submitted a response;

(ii) the use of the disputed domain name in connection with landing webpages some of which are offering to install suspicious software and others are blocked due to the risk of phishing attacks;

(iii) the well-known status of the Complainant's trademark;

(iv) the nature of the disputed domain name (consisting of a misspelling of the Complainant's trademark), and the Respondent's intention to unduly profit from the value of the Complainant's trademark, suggesting a clear indication of the Respondent's registration and holding of the disputed domain name in bad faith, with the implausibility of any good faith use to which the disputed domain name may be put; and

(v) the Respondent's choice to retain a privacy protection service so as to conceal its true identity.

For the reasons stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The third element of the Policy has therefore been established.

## **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 <carvaned.com> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: January 27, 2023