

## **ADMINISTRATIVE PANEL DECISION**

GoCar Rentals, Inc. v. Oren Leibiker

Case No. D2023-3726

### **1. The Parties**

The Complainant is GoCar Rentals, Inc., United States of America (“United States”), internally represented.

The Respondent is Oren Leibiker, Israel.

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

The disputed domain name <gocarisrael.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2023. On September 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondents (O-Car LTD and Boaz Oren, Israel) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 8, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also sent an email to the Complainant on September 8, 2023, raising a deficiency in the Complaint, specifically that the Complaint did not include submission by the Complainant to the jurisdiction of the courts in at least one specified Mutual Jurisdiction. The Complainant filed an amended Complaint on September 8, 2023.

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 September 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2023. On October 11, 2023, an informal communication was received by the Center, identifying the sender as the Respondent, albeit from an email address different than that disclosed by the Registrar as belonging to the Respondent. Pursuant to

paragraph 6 of the Rules, the Center informed the Parties that it would proceed with the panel appointment process.

The Center appointed Jeremy Speres as the sole panelist in this matter on October 19, 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, since its founding in San Francisco, United States in 2004, has offered guided city tours under its GOCAR mark in specialised vehicles intended for self-driving, and currently operates in several cities and countries, including San Francisco, San Diego, and Monterey, in the United States; as well as Barcelona, Spain, and Lisbon and Porto in Portugal (previously also in Miami, United States and Madrid, Spain).

The Complainant's primary website is located at "www.gocartours.com". The Complainant owns United States Trade Mark Registration No. 5,067,701 GOCAR TOURS (Service Mark) in class 39, with a registration date of October 25, 2016.

The Domain Name was registered on June 2, 2022, and currently redirects to a website located at "www.starcar.co.il" at which the services of a business trading as "STAR CAR" are advertised, offering city tours of Jerusalem in open roofed electric cars.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to its GOCARS mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith in order to intentionally create consumer confusion with the Complainant's services for the Respondent's commercial gain.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. A party purporting to be the Respondent sent an informal email communication to the Center on September 11, 2023, from an email address which differed, slightly, to that associated with the Domain Name in the Whois record, in which it was stated as follows (abbreviated by the Panel for brevity):

"...The name bears a resemblance, albeit it's registered in a different country with a distinct language (for domestic customers)...While we launched our service widely in ISRAEL last year we changed the brand to STARCAR and the domain to STARCAR.CO.IL, the disputed domain is used only for technical purposes and not for marketing purposes."

On September 11, 2023, the Center emailed the party who had sent that communication, asking them to verify that they were in fact the Respondent by sending the Center an email from the email address associated with the Domain Name in the Whois record. No such communication was received by the Center, thus the Panel cannot be sure that it was, in fact, the Respondent who sent the informal communication. The Panel accordingly affords the informal communication little weight, particularly in view of its lack of impact on the substantive outcome of this proceeding.

## **6. Discussion and Findings**

### **6.1 Preliminary Issues**

#### **A. Identity of Respondent**

The Complaint and amended Complaint both cite the following two parties as the first two Respondents: O-Car LTD and Boaz Oren, Israel (the “first two Respondents”).

The Complainant initially claimed, in the Complaint, that these first two Respondents owned the Domain Name. The Complainant also claims that O-Car LTD is managed by Boaz Oren, who is the founder and CEO of O-Car LTD, that Boaz Oren approached the Complainant’s affiliate in 2021 and 2022 seeking a license to the proprietary software used by the Complainant, and that the Complainant and the first two Respondents have engaged in settlement discussions culminating in an unsigned settlement agreement. The Complainant has only furnished evidence of the transmission of a cease and desist letter to the first two Respondents, as well as an unsigned settlement agreement drafted by the Complainant’s lawyers, neither of which reflect any participation of these first two Respondents, beyond circumstantial inference.

As regards these first two Respondents’ relationship to the named Respondent, Oren Leibiker, the Complainant points to the named Respondent’s LinkedIn page that reflects his employment for the first two Respondents. On this, the Panel notes that the Respondents all share proximate physical contact details in Israel. The Complainant also contends that the website to which the disputed domain name currently redirects is used by the first two Respondents for their (new) business, as a result of the aforementioned settlement agreements.

As mentioned above, while the party identifying as the Respondent ultimately did not disclose its relationship, the email did demonstrate awareness for the disputed domain name and its current redirection to the business website allegedly used by the first two Respondents. Accordingly, given the totality of the circumstances, it would seem likely that there is a shared connection between the first two Respondents and the named Respondent.

However, the Rules define “Respondent” as “the holder of a domain-name registration against which a complaint is initiated”. Given the Registrar’s disclosure of Oren Leibiker as the registrant of the disputed domain name and in the absence of any material evidence to the contrary, the Panel finds that the proper Respondent in this case is Oren Leibiker alone.

### **6.2 Substantive Issues**

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

The Domain Name begins with the first and dominant part of the Complainant’s registered mark GOCAR. Where at least a dominant feature of the relevant mark is recognisable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7). The Complainant has satisfied the standing requirement under paragraph 4(a)(i) of the Policy.

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

The Complainant’s evidence establishes that its GOCAR TOURS mark was registered, and attracted significant goodwill, well before registration of the Domain Name. The Domain Name is confusingly similar to the Complainant’s mark and the Complainant has certified that the Domain Name is unauthorised by it. The composition of the Domain Name, featuring the dominant part of the Complainant’s mark plus the geographic term “Israel”, carries with it a significant risk of implied affiliation with the Complainant ([WIPO Overview 3.0](#) at section 2.5.1).

For the reasons discussed in relation to bad faith below, it is likely that the Domain Name was registered in order to impersonate the Complainant and take advantage of its reputation. The Respondent's registration and use of the Domain Name in these circumstances cannot represent a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and cannot confer rights or legitimate interests (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)). There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

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

The Panel has independently viewed the historical usage of the Domain Name archived by the Internet Archive. As on July 27, 2022, the Domain Name resolved to a website entitled "GOCAR", offering city tours of Jerusalem in open roofed electric cars. The following factors together clearly indicate an intention on the Respondent's part to impersonate the Complainant and to take advantage of its reputation for the Respondent's commercial gain:

- Use of the dominant part of the Complainant's mark GOCAR for identical services.
- The cars featured on the Respondent's erstwhile website seemingly had a highly similar shape, colour and livery to those of the Complainant, in circumstances where the design of the Complainant's cars is distinctive.
- The Respondent's erstwhile website refers to a Time Magazine article in which a GOCAR offering was praised. However, the article in question related to the Complainant.

The Complainant has presented evidence of actual confusion in the form of a consumer complaining to the Complainant about the Respondent's services in Jerusalem, assuming the Complainant was responsible for rendering them. Actual confusion is an indicator of targeting ([WIPO Overview 3.0](#) at section 3.1.4).

While at the time of filing the Complaint, the disputed domain name no longer resolves to the aforementioned website hosted at the disputed domain name, it currently redirects to a third-party commercial website. Therefore, the current use still reflects the Respondent's ongoing aim to commercially profit from misleading Internet users seeking and expecting to find the Complainant via the confusingly similar disputed domain name.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). For completeness, the Panel notes that while the informal communication, identifying as the Respondent, cites otherwise unknown "technical purposes" for the current and ongoing redirection for competing services, the email itself recognized the resemblance between the disputed domain name and the Complainant's trademark and referenced the change of its "brand" in an apparent recognition of the Internet user confusion being caused. Evidently, no "technical purpose" can validate the registration of, and prior or current use of, the disputed domain name given the circumstances of this proceeding.

The Respondent's conduct falls squarely within paragraph 4(b)(iv) of the Policy and the Complainant has satisfied 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 Domain Name, <gocarisrael.com>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: October 25, 2023