

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Privacy Service Provided by Withheld for Privacy ehf /
gwanaelle benedicte, Holding sanea
Case No. D2022-1772

1. The Parties

The Complainant is Carrefour SA, France, represented by IP Twins, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / gwanaelle benedicte, Holding sanea, France.

2. The Domain Name and Registrar

The disputed domain name <carrefourdrive.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2022. On May 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 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 May 18, 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 May 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 May 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on June 21, 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 is the French entity Carrefour, a worldwide leader in retail. The Complainant operates, under the brand CARREFOUR, over 12,000 stores and e-commerce sites in more than 30 countries. Its operations started in France in the early 1960s, and to date the group employs over 380,000 people around the globe and generated sales beyond EUR 76 billion in 2018. The presence of the Complainant in France is particularly relevant. This is the home country of the Complainant, where its first store was opened. It generates nearly fifty percent of its sales in this country alone.

The Complainant offers in particular the possibility to its clients to buy online and to pick-up their purchases, in particular with their private cars. This service is offered through the brand CARREFOUR DRIVE. The Complainant also owns the domain name <carrefourdrive.com>, registered since 2008 and which is used to redirect users to the main webpage of the Complainant.

The Complainant holds hundreds of trade marks worldwide over CARREFOUR, and it relies on *inter alia*, the following trade mark registrations as a basis for its Complaint:

International trade mark CARREFOUR (word) No. 351147, registered on October 2, 1968;

European Union trade mark CARREFOUR DRIVE (word) No. 10618114, registered on July 4, 2012.

The disputed domain name was registered on February 1, 2022, through a privacy shield service. The identity of the Respondent, an individual domiciled in France, was disclosed by the Registrar in the course of this proceeding.

The disputed domain name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

As a preliminary remark, the Complainant indicates that the trade mark CARREFOUR was considered well known, or famous, by numerous UDRP decisions, and quotes a number of supporting precedents.

Regarding the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its earlier trade marks CARREFOUR, and identical to its earlier trade mark CARREFOUR DRIVE. It indicates in particular that "the addition of a generic term - whether descriptive, geographical, meaningless or otherwise - such as "drive" to a trademark in a domain name does nothing to diminish the likelihood of confusion arising from that domain name".

Regarding the second element of the Policy, the Complainant adduces in particular that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trade mark, or to seek registration of any domain name incorporating said trade mark. Furthermore, the Respondent cannot claim prior rights or legitimate interests in the disputed domain name or to "carrefour". The Complainant conducted searches which did not provide any positive result. The Complainant also notes the lack of *bona fide* use of the disputed domain name, prior to the filing of the Complaint. It states in particular that "[t]he disputed domain name is inherently likely to mislead Internet users, and there is no evidence that the Respondent has been making a legitimate non-commercial or fair

use of the disputed domain name. In addition, in light of the worldwide renown of the Complainant's trademark, the Complainant sees no plausible use of the domain that would be legitimate fair and non-commercial".

Finally, regarding the third element of the Policy, the Complainant develops the following arguments: first, the Respondent could not ignore the existence and reputation of the trade marks CARREFOUR. Second, the Respondent chose to incorporate the Complainant's trade mark CARREFOUR in the disputed domain name "in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's domain". Third, the trade marks of the Complainant significantly predate the registration of the disputed domain name and the Respondent could not ignore their existence. Fourth, "[b]y simply maintaining the domain name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain name. In addition, the domain name resolves to an error page. The non-use of a domain name (including an error page) does not prevent a finding of bad faith under the doctrine of passive holding". Also, the Respondent attempted to conceal his identity by using a privacy service. The Respondent also indicated an inexistent postal address when registering the disputed domain name, with references pertaining to different regions. Fifth, the Complainant states that it cannot conceive any good faith use of the disputed domain name in the future.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

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

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the trade marks CARREFOUR and CARREFOUR DRIVE.

The disputed domain name <carrefourdrive.org> is identical to the Complainant's trade mark CARREFOUR DRIVE.

It is also confusingly similar to the trade mark CARREFOUR of the Complainant, as it reproduces it in its entirety, combined with the term "drive". This addition does not prevent the Complainant's trade mark from being immediately recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Therefore, the first element of the Policy is satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

As indicated by the Complainant, the Respondent does not appear to be known by the disputed domain name, or to have been licensed or otherwise authorized by the Complainant to use its trade mark in a domain name or otherwise.

Likewise, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Actually, this Panel finds unpalatable a claim of use of the disputed domain name in a fair way; rather, the addition of the element “drive”, after “carrefour” makes a clear connection with some of the services provided for by the Complainant, as explained in the description of facts.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, 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 complainant from reflecting the complainant’s trade mark or service 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 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.

The Panel concurs with the Complainant that the disputed domain name was registered, and is being passively used in bad faith by the Respondent.

The factors which are normally taken into account for a finding of bad faith passive holding are listed in section 3.3 of the [WIPO Overview 3.0](#), as follows: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

All these factors are met in this case:

First, the Complainant's trade mark CARREFOUR is very well known, as proven by the Complainant and recognized in countless UDRP decisions. The Respondent, who is domiciled in France, was certainly aware of the existence of this trade mark when registering the disputed domain name. Besides, the addition of the element "drive" in the disputed domain name indicates that the Respondent knows the Complainant and its activities. The mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Second, the Respondent has failed to file a response to the Complaint.

Third, the Respondent has taken active steps to conceal its true identity, by using a privacy shield service and by indicating an inexistent address when registering the disputed domain name.

Fourth, the Panel does not conceive any possible use in good faith of the disputed domain name. Much to the contrary: for the reasons indicated above, the disputed domain name is likely to be used in the future in bad faith.

To conclude: a finding of bad faith registration and passive use is in order, and accordingly, the third criteria set out in paragraph 4(a) of the Policy is also 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 the disputed domain name, <carrefourdrive.org> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: July 1, 2022