

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Dexter Turner

Case No. D2022-2032

1. The Parties

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

The Respondent is Dexter Turner, Australia.

2. The Domain Name and Registrar

The disputed domain name <icarrefoure-pass.site> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 Complainant on June 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 13, 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 Respondent of the Complaint, and the proceedings commenced on June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 5, 2022.

The Center appointed Timothy D. Casey as the sole panelist in this matter on July 12, 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

Complainant is a large retailer that has been operating since at least 1968. Complainant had revenues of EUR 76 billion in 2018, operates more than 12,000 stores in more than 30 countries, and employs more than 384,000 people. There are more than 1.3 million unique visitors to its stores each day. In addition to retail services, Complainant also offers travel, banking, insurance, and ticketing services. Complainant owns several hundred trademark registrations worldwide that include CARREFOUR, including the following representative marks (the "CARREFOUR Marks"):

Mark	Designation	International Class(es)	Registration No.	Registration Date
CARREFOUR	International	1 – 34	351,147	October 2, 1968
CARREFOUR	International	35 – 42	353,849	February 28, 1969
CARREFOUR	Australia	42	719,234	October 8, 1996
CARREFOUR PASS	International	36	719,166	August 18, 1999

Complainant owns numerous domain names identical to the CARREFOUR Marks, both within generic and national Top-Level domains.

A number of prior decisions have acknowledged the reputation of the CARREFOUR Marks.

The disputed domain name was registered on April 16, 2022, and resolves to an error page.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name, which includes "carrefour" and "carrefour pass" with the addition of an "i" and an "e" before and after "carrefour", respectively, is confusingly similar to the CARREFOUR Marks. Complainant contends that the addition of terms or letters does nothing to diminish the likelihood of confusion because the disputed domain name contains sufficiently recognizable aspects of the CARREFOUR Marks, *i.e.*, reproduction of the CARREFOUR and CARREFOUR PASS marks in their entirety.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name. Complainant performed searches and could find no trademark associated with the disputed domain name and there is otherwise no evidence that Respondent is commonly known by the disputed domain name in any way. Complainant has not licensed or authorized Respondent to use the CARREFOUR Marks in any manner or form. Complainant also contends that Respondent has not used or prepared to use the disputed domain name, which resolves to an error page, in relation to a *bona fide* offering of goods or services.

Finally, Complainant contends that it has presented a *prima facie* case of Respondent's lack of rights or legitimate interests in the disputed domain name, especially in view of Complainant's long and extensive use of the CARREFOUR Marks, thereby putting the burden on Respondent to establish otherwise.

Complainant believes Respondent has registered and is using the disputed domain name in bad faith. As evidence, Complainant points to its long established and extensive trademark usage and suggests that Respondent necessarily had the CARREFOUR Marks in mind when registering the disputed domain name, such that the choice of the disputed domain name was not accidental, but even if it was, a quick trademark

search or search engine query would have informed Respondent of the CARREFOUR Marks. Complainant contends that the disputed domain name was chosen with the hope and expectation that Internet users searching for Complainant's services and products would instead come across a domain associated with the disputed domain name but even if the Internet user only happened upon the error page such non-use of the disputed domain name constitutes bad faith passive holding. Given the CARREFOUR Marks, Complainant cannot contemplate a manner in which the disputed domain name could ever be used in the future in good faith. Finally, Complainant contends that Respondent's use of a privacy protection service to conceal its identity and Respondent's use of a non-existent city and postal code for an address are further proof that the disputed domain name was registered in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the CARREFOUR Marks as early as 1968, more than 50 years prior to registration of the disputed domain name, and Complainant's registration of many CARREFOUR Marks since then, are more than sufficient to establish that Complainant has trademark rights in the CARREFOUR Marks.

Complainant contends that the disputed domain name is confusingly similar to the CARREFOUR Marks. Complainant contends that the addition of the letters "i", "e" (the latter creating a typo) and hyphen "-" before and after CARREFOUR does not prevent a finding of confusing similarity to Complainant's CARREFOUR Marks.

The Panel finds that the disputed domain name is confusingly similar to the CARREFOUR Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name or the CARREFOUR Marks. Complainant has not licensed or authorized Respondent to use or register the disputed domain name. The disputed domain name's resolution to an error page does not provide evidence of any use or preparation to use the disputed domain name in relation to a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising substantially all of at least two different CARREFOUR Marks, with the addition of two letters, carries a risk of Internet user confusion (that seemingly being the Respondent's aim), and possibly even in the case of an unsuspecting user, of implied affiliation with Complainant as it may mistakenly be seen as effectively impersonating or suggesting some connection to Complainant, and accordingly cannot constitute a fair use in these circumstances.

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant's first use and first registration of the CARREFOUR Marks and Complainant's use of the CARREFOUR Marks in association with the noted goods and services, ii) the nature of the disputed domain name, iii) the subsequent timing of the registration of the disputed domain name, and iv) Complainant's prior trademark rights internationally, and particularly in Australia, the Panel

finds that Respondent clearly knew of the CARREFOUR Marks at the time of registration of the disputed domain name. Respondent's registration of the disputed domain name was therefore in bad faith.

With respect to the passive holding doctrine, the Panel has considered a number of factors consistent with WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 3.3 as follows: (i) the degree of distinctiveness or reputation of Complainant's mark (the CARREFOUR Marks are distinct and have been used extensively worldwide, including in Australia, for more than 50 years), (ii) the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use (Respondent did not reply to Complainant's contentions), (iii) Respondent's concealing its identity and use of false contact details (Respondent used a false address as contact detail, which is noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the disputed domain name may be put (the Panel agrees with Complainant's contention that it is difficult to contemplate a manner in which the disputed domain name could ever be used in the future in good faith). In view of these factors, Respondent is passively holding the disputed domain name which is also evidence of bad faith use.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

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, <icarrefoure-pass.site>, be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: June 26, 2022