

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. silvia vera, Mercado S.A

Case No. D2023-2538

### **1. The Parties**

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

The Respondent is silvia vera, Mercado S.A, Argentina.

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

The disputed domain name <carrefourmembert-platinum.com> 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 June 13, 2023. On June 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 2023, 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 June 19, 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 June 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 8, 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 is a widely known company located in France and operating globally in the food retail sector. It runs more than 12,000 stores in over 30 countries.

The Complainant owns a large number of word and figurative CARREFOUR trademark registrations around the world. According to the Complaint, the Complainant is, among many others, the registered owner of International Trademark Registration No. 351147, registered on October 2, 1968 for CARREFOUR and covering protection for various goods and services (Annex 4.2 to the Complaint).

Since 1995, the Complainant further holds and operates its main company website at “carrefour.com”. (Annex 5.1. to the Complaint).

The disputed domain name was registered on April 6, 2023.

The Respondent is reportedly from Argentina.

At the time of the Decision, the disputed domain name resolves to a default page.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

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

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

#### **6. Discussion and Findings**

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in the respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. ([WIPO Overview 3.0](#), Section 4.3.)

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the CARREFOUR trademark by virtue of various trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the CARREFOUR mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the CARREFOUR trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "member" and "-platinum", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's CARREFOUR mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Furthermore, the nature of the disputed domain name, comprising the Complainant's CARREFOUR trademark and additional terms, indicates an awareness of the Complainant and its trademark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

In the absence of a Response, the Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered the disputed domain name many years after the registration and widely use of the CARREFOUR trademark by the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

As regards bad faith registration, the Panel finds that the Respondent must have had the Complainant and its widely-known CARREFOUR trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant's CARREFOUR trademark in its entirety, to target and mislead customers of the Complainant. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name by the Respondent in bad faith, the Panel notes that the disputed domain name resolves to a default page.

Panels have found that the non-use of a domain name (including a redirection to a blank or default page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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. See [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness and reputation of the Complainant's CARREFOUR trademark, and the inherently misleading composition of the disputed domain name, which purports a direct relation to the Complainant and its business. The Panel concludes that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has 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 <carrefourmembert-platinum.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: August 22, 2023