

ADMINISTRATIVE PANEL DECISION

Carrefour SA. v. Jessica van Mierlo
Case No. D2023-4560

1. The Parties

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

The Respondent is Jessica van Mierlo, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <1carrefour.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 November 2, 2023. On November 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 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 November 10, 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 November 13, 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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2023.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on January 3, 2024. 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 retail company Carrefour S.A., which operates in more than 30 countries and pioneered the concept of hypermarket back in 1968.

The Complainant owns numerous trademark registrations in different regions of the world for the brand CARREFOUR, such as the International registration No. 351147, registered on October 2, 1968; and the International registration No. 353849, registered on February 28, 1969.

In addition, the Complainant also owns several domain names reflecting its trademark CARREFOUR, including <carrefour.com> (registered on October 25, 1995).

The Respondent is Jessica van Mierlo, from Netherlands (Kingdom of the).

The Respondent registered the disputed domain name on August 18, 2023.

The Panel accessed the disputed domain name on January 18, 2024, when it was redirecting Internet users to the Complainant's official French website at "www.carrefour.fr".

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.

Notably, the Complainant contends that:

- The disputed domain name is confusingly similar to the Complainant's trademark CARREFOUR. The Complainant owns several hundred trademarks worldwide protecting the term "Carrefour". The Complainant's trademark enjoys wide-spread, continuous reputation, evidenced by a list of previous UDRP panels decisions holding that the Complainant and its trademark are widely well known. The disputed domain name is highly similar to the earlier well-known trademark CARREFOUR. Indeed, the disputed domain name contains the trademark CARREFOUR in its entirety, associated to the figure "1". It is established case law that the addition of a term to a well-known trademark in a domain name does nothing to prevent a finding of confusing similarity arising from that domain name. The use of the lower case letter format, on the one hand, and the addition of the generic Top-Level Domain ("gTLD") ".com", on the other hand, are not significant in determining whether the disputed domain name is identical or confusingly similar to the earlier trademark of the Complainant.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant performed searches and found no CARREFOUR trademark owned by any other person than the Complainant. Furthermore, the Complainant has found no evidence whatsoever that the Respondent is known by the disputed domain name. The disputed domain name contains the Complainant's earlier registered trademarks CARREFOUR in their entirety, without any license or authorization from the Complainant, which is evidence of a lack of legitimate interest. The Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services. On the contrary, at the time of submission of the Complaint, the disputed

domain name redirects towards one of the Complainant's main websites. This cannot qualify as a *bona fide* offering of goods or services that would grant a legitimate interest in the registration of the disputed domain name to the Respondent. Since the adoption and extensive use by the Complainant of the trademark CARREFOUR predates the first registration of the disputed domain name, the burden is on the Respondent to establish the Respondent's rights or legitimate interests the Respondent may have or have had in the disputed domain name. None of the circumstances which set out how a respondent can prove rights or legitimate interests in the disputed domain name, are present in this case. Therefore, given that the Complainant has made a *prima facie* case that the Respondent lacks legitimate rights or interests in the disputed domain name, the burden of proof shifts to the Respondent, who should come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Complainant and its trademarks were so widely well known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights on the term "Carrefour". The Respondent had the Complainant's name and trademark in mind when registering the disputed domain name. Simple searches on an online search engine show results only related to the Complainant. The Complainant's CARREFOUR trademark registrations significantly predate the registration date of the disputed domain name. Considering the current use of the disputed domain name, it is clear that the Respondent not only had the Complainant's trademark in mind when registering the disputed domain name but intended to further aggravate the likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, by redirecting it towards an official website of the Complainant. Internet users would be led to believe the disputed domain name is part of the Complainant's portfolio, which is not the case. The Complainant and its clients are regularly targeted by cyberattacks, notably phishing attempts. The Complainant has neither noticed nor been made aware of cyberattacks involving the disputed domain name at the moment of the Complaint's filing. However, the Complainant contends that this kind of use is highly plausible considering the current web use of the disputed domain name and would explain the redirection towards the Complainant's website "www.carrefour.fr" as an attempt to legitimate the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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.

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Annexes 3, 4, and 5 to the Complaint show numerous trademark registrations for CARREFOUR. Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name incorporates the Complainant's trademark CARREFOUR, with the addition of the numeral "1" as a prefix. The disputed domain name also presents the gTLD extension ".com".

Although the addition of other terms or figures (here, "1") may bear on assessment of the second and third elements, the Panel finds the addition of such figure does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well established that the addition of a gTLD, such as ".com", is typically disregarded when determining whether a domain name is confusingly similar to a complainant's trademark as such is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark and that 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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. 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.

The Panel finds no indication that the Respondent is commonly known by the disputed domain name.

Although the website at the disputed domain name redirects to the Complainant's official website in France, the Complainant has asserted that the Respondent is not an authorized representative, nor has obtained any permission for such reproductions of trademarks, logos, and copyrighted materials. Therefore, the Panel finds that the nature of the disputed domain name comprising the Complainant's trademark and an additional numeral "1", 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.

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.

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. [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name includes the distinctive trademark CARREFOUR in its entirety. According to the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that 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.

Also, when the disputed domain name was registered in 2023, the CARREFOUR trademark was already notorious and directly connected with the Complainant's retail services worldwide, including in Netherlands (Kingdom of the).

Therefore, the Panel concludes that it is unlikely that the Respondent was not aware of the Complainant's trademark and that the registration of the disputed domain name was a mere coincidence. Actually, the redirection of Internet users to the Complainant's official website in France makes clear that the intent of the Respondent with the disputed domain name was to specifically target the Complainant's trademark.

The Panel holds that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain name. Furthermore, the redirection of Internet users to such a website, which is not operated by the Complainant or by parties authorized by it, raises suspicions of fraud or of phishing activities, as stated by the Complainant. Panels have held that the use of a domain name for illegal activity (here, claimed phishing and impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Therefore, having reviewed the record, the Panel finds the registration and use of the disputed domain name constitute bad faith under 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 disputed domain name <1carrefour.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: January 17, 2024