

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Youssefgcxh Elachourix
Case No. D2024-0840

1. The Parties

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

The Respondent is Youssefgcxh Elachourix, United States of America.

2. The Domain Name and Registrar

The disputed domain name <carrefourpass.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 26, 2024. On February 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 5, 2024, 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 March 5, 2024.

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 March 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 2, 2024.

The Center appointed Catherine Slater as the sole panelist in this matter on April 5, 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 a French company. It operates a worldwide business under the “Carrefour” name.

The Complainant is the registered proprietor of numerous trade mark registrations throughout the world including: -

- International Trademark 351147 for CARREFOUR (word mark) registered on October 2, 1968, with protection granted in the Benelux Office for Intellectual Property, Italy, Monaco and Spain;

- European Union Trade Mark 005178371 for CARREFOUR (word mark) registered on August 30, 2007; and

- International Trademark 719166 for CARREFOUR PASS (word mark) registered on August 18, 1999, with protection granted in the Benelux Office for Intellectual Property, China, Czech Republic, Hungary, Italy, Poland, Portugal, Spain, Switzerland, Türkiye.

The Complainant is also the registered proprietor of numerous domain names identical to, or comprising, its trade marks including <carrefour.com> registered on October 25, 1995 and <pass-carrefour.com> registered on October 6, 2019.

The disputed domain name was registered on January 23, 2024. At the time the Complaint was filed access to the website to which the disputed domain name pointed was blocked and the following message appeared: -

“Dangerous site

Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone, or credit card number. Chrome strongly recommends going back to safety.

Chrome has built-in safety features to protect you while you browse - like Google Safe Browsing, which recently found phishing on the site you're trying to visit. Phishing sites pretend to be other sites to trick you.

Even sites that are normally safe are sometimes compromised by attackers. Let us know if you think there's been a mistake and that this site doesn't pose a danger.

Only visit this unsafe site if you're sure you understand the risks.”

At the date of this Decision the website appears to be inactive. Attempts to reach the website are met with the message that the page cannot be reached because it took too long to respond.

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 its trade marks enjoy a wide-spread reputation and relies upon a large number of prior UDRP decisions made by WIPO that have found the CARREFOUR mark to be well-known. The Complainant further contends that the disputed domain name is confusingly similar to both its CARREFOUR and CARREFOUR PLUS marks because both trade marks are immediately recognizable in the disputed domain name despite a minor misspelling consisting of the replacement of a letter 'o' with a 'u' which does not alter the overall impression given by the disputed domain name.

The Complainant further contends that:

- it could find no trade mark registrations for CARREFUUR or CARREFUURPASS owned by the Respondent;
- there is no evidence that the Respondent has been commonly known by the disputed domain name;
- the Complainant has not authorized or licensed the use of its trade marks to the Respondent;
- the Respondent had not, before the 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;
- the Complainant contends that the warning message displayed when attempting to visit the website to which the disputed domain name points cannot be considered bona fide, legitimate or fair use;
- the disputed domain name is inherently likely to mislead internet users;
- there is no evidence that the Respondent has been making legitimate noncommercial or fair use of the disputed domain name;
- in light of the worldwide renown of the Complainant's trade mark there is no plausible use of the disputed domain name that would be legitimate, fair and noncommercial.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith because:

- taking into account that the Complainant and its trade marks are so widely known, it is inconceivable that the Respondent was unaware of the Complainant or its earlier rights;
- it is highly likely that the Respondent chose the disputed domain name because of its similarity to the Complainant's trade mark rights in order to carry out a phishing scam;
- the Respondent knew, or should have known, when acquiring and using the disputed domain name he would do so in violation of the Complainant's earlier rights;
- the use of the disputed domain name cannot be regarded as good faith use; and
- taking into account the longstanding international use of its trade marks it is impossible for the Respondent to use the disputed domain name in good faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (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 names have been registered and are 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.

The Complainant has shown rights in respect of the trade marks CARREFOUR and CARREFOUR PASS for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark CARREFOUR PASS is recognizable within the disputed domain name.

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The disputed domain name is merely an intentional misspelling (the swapping of one letter 'o' for a 'u') of the trade mark. [WIPO Overview 3.0](#), section 1.9.

The disputed domain name is thus confusingly similar to the Complainant's afore-mentioned trade mark.

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.

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.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used 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.

Taking into account the inherently distinctive nature of, and reputation in, the CARREFOUR trade mark (from which the CARREFOUR PASS trade mark must also benefit) and the fact that the disputed domain name is merely a misspelling of the CARREFOUR PASS trade mark, it is inconceivable that the Respondent did not have the Complainant and the Complainant's trade marks in mind at the point of registration. It is equally inconceivable that the Respondent had any reason to register the disputed domain name other than to take advantage of, abuse, or otherwise engage in behaviour detrimental to the Complainant's CARREFOUR and CARREFOUR PASS trade marks. [WIPO Overview 3.0](#), section 3.1.

The disputed domain name has more likely than not been used for phishing purposes and is now not used at all. As set out below, this means that the disputed domain name has previously been used, and continues to be used, in bad faith.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Although 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, and (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. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes that: (i) the Complainant's CARREFOUR trade mark is distinctive, has a strong reputation and is widely known and that such benefits will also naturally accrue to the CARREFOUR PASS trade mark (ii) that the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) that the Respondent initially concealed his identity, that the unusual composition of his first name suggests that it may be false and that it has not been possible in these proceedings for WIPO to deliver post to the Respondent which suggests that his address is also false, and (iv) that it is impossible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be good faith use.

Considering these circumstances, the Panel concludes that the Respondent's current passive holding of the disputed domain name in this case satisfies the requirement of paragraph 4(a)(iii) that the disputed domain name is being used in bad faith by the Respondent.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 disputed domain name <carrefuurpass.com> be transferred to the Complainant.

/Catherine Slater/

Catherine Slater

Sole Panelist

Date: 19 April 2024