

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Paula Cristina
Case No. D2022-0371

1. The Parties

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

The Respondent is Paula Cristina, Brazil.

2. The Domain Name and Registrar

The disputed domain name <rh-carrefour.online> (the “Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2022. On February 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 4, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2022. The Respondent did not submit any response by the due date or thereafter. Nor has she requested additional time within which to respond. Accordingly, the Center notified the Respondent’s default on April 4, 2022.

The Center appointed Archibald Findlay SC as the sole panelist in this matter on May 6, 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 following facts and circumstances are to be found in the Complaint and its annexures and, in the absence of challenge, can be accepted as background.

The Complainant is one of the worldwide leaders in retail and is a pioneer of the concept of hypermarkets since 1968.

The Complainant is listed on the index of the Euronext Paris Stock Exchange (CAC 40) and, in 2019, it had a turnaround of 80 billion euros. It also operates more than 12,000 stores in more than 30 countries worldwide. It employs more than 384,000 employees, also worldwide, and estimates that it has 1.3 million daily unique visitors in its stores. It follows that it is, on the facts, a major and well-known worldwide leader in retail.

In addition, it also offers travel, banking, insurance or ticketing services. It owns many registered trademarks, incorporating the term CARREFOUR worldwide and, in particular, it owns the following registrations in respect of its domain name applicable:

Type of Trademark	Name	Number	Date of Registration	Nice Classification
International	CARREFOUR	351147	October 2 1968	1 – 34
International	CARREFOUR	353849	February 28, 1969	35 – 42
Brazilian	CARREFOUR LINKS	1609621	June 8, 2021	35
Brazilian	CARREFOUR BIO	1539537	May 12, 2020	35
Brazilian	CARREFOUR BIO	1554566	May 15, 2020	31 - 35

The Complainant also owns several domain names, the following of which it contends are of a significance in this matter.

Domain Name	Year of Registration
Carrefour.com	1995
Grupocarrefourbrasil.com.br	2017
Carrefour.com.br	1997

It draws attention to the fact that there have been previous challenges and it puts up details of past WIPO decisions by panelists in its favor.

It contends further that the Internet demonstrates its fame and notoriety and that that this is based upon its social media accounts which are either “linked” or “followed” by millions of users, including in Brazil.

Social Media	Followers
Facebook	11,7 millions
Linkedin	1,1 millions
Instagram	950 000
Twitter	81 000

The Domain Name was registered on October 9, 2021, and led to the inactive page on the date of filing of Complaint.

5. Parties' Contentions

A. Complainant

As appears from the factual background, the Complainant's CARREFOUR trademark has been used extensively. The fame of the CARREFOUR trademark has been said to have been confirmed in numerous previous UDRP decisions.

The addition of the letters "rh" are not relevant and would accordingly not have any impact on the overall impression of the dominant part of the Domain Name, being that of CARREFOUR. Accordingly, anyone seeing it would be bound to mistake it for a domain name relating to the Complainant, particularly, as it incorporates the whole of the earlier trademarks of the Complainant.

It follows, so the Complainant contends, that the Domain Name is clearly confusingly similar to the Complainant's registered trademark CARREFOUR.

The Complainant contends further that the Respondent has no registered trademarks or trade names corresponding to the Domain Name, nor anything, which suggests that she has been using CARREFOUR in any other way which would give her any rights or legitimate interests in the Domain Name.

It is clear that no license or authorization of any other kind has been given by the Complainant to the Respondent to use the trademark CARREFOUR. CARREFOUR is a famous trademark worldwide and any such user would violate the Complainant's rights and not be legitimate.

It is highly unlikely that the Respondent would not have been aware of the Complainant's legal rights in the Domain Name containing the word "carrefour" at the time of registration.

The Respondent is also not using the Domain Name for a *bona fide* purpose.

B. Respondent

The Respondent did not reply to the Complainant's contentions. By her failure to respond, the Respondent is in default in terms of paragraphs 5(e) and 14 of the Rules and paragraph 8(c) of the Supplemental Rules, with the result that the Panel must now deal with the matter on the Complaint.

6. Discussion & Findings

A. Substantive Elements of the Policy

Paragraph 15(a) of the Rules requires that:

"A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following:

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

Paragraph 4(b) of the Policy sets out four illustrative circumstances or acts which would, for the purposes of

paragraph 4(a)(iii) above, be evidence of the registration of a domain name in bad faith. These are non-exclusive.

Similarly, paragraph 4(c) of the Policy sets out three illustrative circumstances which would demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii).

B. Effect of Default

Notwithstanding the fact that a respondent may be in default, a complainant bears the burden of proof in respect of each of the three main elements in terms of paragraph 4(a) of the Policy. Such default does not, *per se*, entitle a complainant to a finding in its favor by reason thereof, as failure by the complainant to discharge the burden of proof will still result in the complaint being denied (*M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). It follows that such default does not, of itself, constitute an acceptance or an admission of any of the averments or contentions put forward, or of the supporting evidence put up (*Standard Innovation Corporation v. Shopintimates USA*, WIPO Case No. [D2011-0049](#)). The Panel is nevertheless not bound to accept all that has been put up by the Complainant but must evaluate it as it stands (*B Brooke Bollea, a.k.a Brooke Hogan v. Robert McGowan*, WIPO Case No. [D2004-0383](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, WIPO Case No. [D2010-0551](#)).

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inference as it considers appropriate from the failure of a party to comply with a requirement of the Rules (*Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael*, WIPO Case No. [D2009-0942](#)).

In the present instance, the Panel finds that there are no exceptional circumstances for the failure of the Respondent to submit a Response, particularly in the light of the fact that the Center wrote to the Respondent when dealing with procedural matters and advising the Respondent of time limits.

From this, the Panel considers that it may accept that the Respondent does not deny the facts asserted and contentions made by the Complainant based on such facts (*Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *LCIA (London Court of International Arbitration) v. Wellsbuck Corporation*, WIPO Case No. [D2005-0084](#); *Ross-Simons, Inc. v. Domain.Contact*, WIPO Case No. [D2003-0994](#); *Standard Innovation Corporation v. Shop Intimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd.*, WIPO Case No. [D2012-0040](#); *Knorr-Bremse AG. v. WhoisGuard Protected, WhoisGuard, Inc. / Mosco Binzu*, WIPO Case No. [D2019-0616](#)).

Thus, in the view of the Panel, it may accept asserted facts that are not unreasonable, with the consequence that the Respondent will be subjected to inferences that flow naturally from the information provided by the Complainant (*Reuters Limited v. Global Net 2000, Inc, Supra*; *RX America, LLC. v. Matthew Smith*, WIPO Case No. [D2005-0540](#); *Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael, Supra*; *Standard Innovation Corporation v. Shopintimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd., Supra*; *Groupe Auchan v. Anirban Mitra*, WIPO Case No. [D2012-0412](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)); *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-4146](#)).

C. Domain Name is Identical or Confusingly Similar

The Complainant put up details of its trademarks, registered internationally and in Brazil, and some of the domain names which it owns. For the purposes of the Policy, the Panel finds the Complainant has rights in the trademark CARREFOUR.

The fact that the word mark CARREFOUR has been incorporated entirely into the Domain Name is sufficient

to establish that it is identical or confusingly similar to the Complainant's registered mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, WIPO Case No. [D2001-0784](#); *Lilly ICOS LLC v. John Hopking / Neo net Ltd.*, WIPO Case No. [D2005-0694](#); *Société Des Produits Nestlé SA v. Mustafa Yakin / Moniker Privacy Services*, WIPO Case No. [D2008-0016](#)).

Neither the letters "rh" nor the fact that the Top-Level Domain ".online" has been added to the Complainant's trademark would prevent the Domain Name from being confusingly similar. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), sections 1.8 and 1.11.1.

In these circumstances, the Panel has no difficulty in concluding that the Complainant has established the first element in terms of paragraph 4(a)i) of the Policy.

D. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate its rights to or legitimate interests in the domain name for the purposes of Paragraph 4(a)ii) of the Policy, namely:

- (i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the Domain Name in connection with the *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to target the trademark or service mark at issue.

Although paragraph 4(a)ii) requires the Complainant to prove that the Respondent has no rights to or legitimate interests in the domain name, once the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the domain name, the burden of production of evidence on this factor shifts to the Respondent to rebut the showing, despite the overall burden of proof remaining upon the Complainant to prove each of the three elements of paragraph 4(a) of the Policy. (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Co, Supra*).

Having defaulted, the Respondent has placed herself in a position that she has not produced any evidence to rebut such *prima facie* case as may have been established by the Complainant, and the enquiry must therefore focus upon what is evidenced by the Complainant in order to determine whether or not it has been so established.

The Complainant contends that it is the proprietor of the trademark CARREFOUR and that the Respondent has not been given any permission to register or use any domain name incorporating the trademark of the Complainant. It follows, therefore, that the Respondent has no right to the use of that mark as part of the Domain Name and that any unauthorized use for commercial purposes would violate the wide-reaching trademark rights enjoyed by the Complainant. (*Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. [D2003-0615](#); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, WIPO Case No. [D2002-0605](#); *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. [D2000-1374](#); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. [D2004-0360](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, WIPO Case No. [D2010-0551](#)).

Apart from there being no authorization on the part of the Complainant, there is no relationship or association

between the Complainant and the Respondent, whether by license or otherwise, which also militates against the Respondent having rights or legitimate interests in or other entitlement, which might fall within that purview (*Sybase, Inc. v. Analytical Systems*, WIPO Case No. [D2004-0360](#)). The implication arising from the Domain Name, in the mind of a would-be customer, is clearly that the Respondent is either of or in some way associated with the Complainant. This would be contrary to the facts and does not establish any rights or legitimate interests.

In view of the facts and circumstances put up on this ground and which are unchallenged, the Panel is of the view that the Complainant should therefore succeed on this ground as well.

The Panel is therefore satisfied that, in the circumstances, the Complainant has established the second element of the Policy.

E. Registration & Use in Bad Faith

Paragraph 4(b) of the Policy provides that for the purposes of paragraph 4(a)iii) of the Policy, the following circumstances, in particular but without limitation, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation or endorsement of your website or location or of a product or service on your website or location.”

The selection of a Domain Name that is the same as, or confusingly similar to, the Complainant’s trademark and the Complainant’s domain name, particularly in the absence of any explanation, leads to the conclusion, in the view of the Panel, that the Respondent must have known of the reputation of the Complainant in the market and therefore she selected the Domain Name in circumstances where she was very well aware of the Complainant’s reputation and intended to benefit therefrom (*Deutsche Post AG v. MailMij LLC*, WIPO Case No. [D2003-0128](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)), particularly where it is so widely known globally.

Prior panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)). Noting the Respondent’s incorporation of the well-known trademark, the lack of the Respondent’s participation to this proceeding, and the lack of any credible good-faith explanation as to the use to which the disputed domain name may be put, the Panel concurs that the passive holding of the disputed domain name does not prevent a finding of bad faith under the circumstances of this proceeding.

The Panel is therefore satisfied that the Complainant has established the third element under paragraph 4(a)iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Panel orders that the Domain Name <rh-carrefour.online> be transferred to the Complainant.

/Archibald Findlay/

Archibald Findlay

Sole Panelist

Date: May 18, 2022