

## **ADMINISTRATIVE PANEL DECISION**

**Carrefour SA v. Domains By Proxy, LLC / Mohamed Medo**  
**Case No. D2022-0705**

### **1. The Parties**

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

The Respondent is Domains By Proxy, LLC, United States of America / Mohamed Medo, Egypt.

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

The disputed domain name <carrefouroffer.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 March 1, 2022. On March 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 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 the Complainant on March 8, 2022 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 11, 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 the Respondent of the Complaint, and the proceedings commenced on March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on April 14, 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 Complainant is a global retail company based in France, operating thousands of hypermarkets, supermarkets and markets around the world.

The Complainant is the owner of numerous trade mark registrations for CARREFOUR (the "Mark") around the world, including:

- International trade mark registration number 351147, registered on October 2, 1968; and
- International trade mark registration number 353849, registered on February 28, 1969.

The disputed domain name was registered on February 6, 2022. It currently directs Internet users to a webpage featuring what appears to be sponsored links to sales, by parties other than the Complainant, of goods and services similar to those offered by the Complainant under the Mark.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world, which have been recognized in previous UDRP decisions. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) in its entirety with the addition of the descriptive term "offer", under the generic Top-Level Domain ("gTLD") ".com".

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has been using the disputed domain name to mislead consumers into believing that the website (which contains click-through links) offers products and services connected to the Complainant, with the intention to trade off the Complainant's goodwill and reputation for the Respondent's commercial gain, contrary to the Policy.

The Complainant also submits that the use of the additional word "offer" in the disputed domain name is intended to attract Internet users who are searching for the Complainant's products and retail services, with the intention to mislead those consumers into thinking the disputed domain name is connected to the Complainant.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate non-commercial or fair use of it; or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name, and therefore registered it and is using it in bad faith. The Complainant states that it has a number of stores in Giza, where the Respondent purports to be located, and that the Mark, according to the Complainant, is well-known throughout the world and is highly distinctive, being recognised and identified as being connected to the Complainant, making a coincidental adoption of the disputed domain name by the Respondent virtually impossible.

The Complainant notes too that the Respondent has used a privacy service to conceal its identity for as long as possible.

Together, the Complainant submits that the Respondent is using the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- (a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

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

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)) provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The addition of "offer" in the disputed domain name does not prevent a finding of confusing similarity, nor does the use of the gTLD ".com".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

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

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is neither generic nor descriptive, and enjoys a degree of distinctiveness that makes a coincidental adoption by the Respondent highly unlikely. The Complainant states that it has not given the

Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a non-commercial or fair use of it.

The redirection of Internet users to a website offering pay-per-click links to goods and services which compete with the Complainant does not constitute a *bona fide* sale of goods or services or a legitimate non-commercial or fair use within the meaning of the Policy. Section 2.9 of the [WIPO Overview 3.0](#) states that: "Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users".

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed". Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel notes that the Mark has already been found by previous UDRP panels to be distinctive and to have a reputation, rather than being a descriptive or generic term.

The Panel also notes that the disputed domain name was registered in 2022, many years after the Mark was registered. The Panel therefore accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith, being used for a commercial purpose that involves redirecting Internet users (in particular those seeking the Complainant) to third parties and competitors of the Complainant, whilst representing that there is a connection to the Complainant.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Mark.

The Panel finds that the Respondent has registered and is using the disputed domain name 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 <carrefouroffer.com> be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: April 29, 2022