

## **ADMINISTRATIVE PANEL DECISION**

**Carrefour SA v. Privacy Service Provided by Withheld for Privacy ehf /  
Konan Miguel, Lampemagique  
Case No. D2022-0761**

### **1. The Parties**

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Konan Miguel, Lampemagique, Côte d'Ivoire.

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

The disputed domain name <carfourbank.live> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 3, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 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 6, 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 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2022.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on April 11, 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 multinational retail company headquartered in France. The Complainant has presence in Côte d'Ivoire. The Complainant additionally offers travel, banking, insurance, and ticketing services.

The Complainant is the owner of numerous trademarks for or incorporating CARREFOUR, including:

- International trademark for CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 01 to 34;
- International trademark for CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42;
- French trademark for BANQUE CARREFOUR No. 3585968, registered on July 2, 2008, duly renewed, and designating services in international class 36;
- French trademark for CARREFOUR BANQUE & ASSURANCE No. 3585950, registered on July 2, 2008, duly renewed, and designating services in international class 36.

(hereinafter the "CARREFOUR trademarks" or "CARREFOUR trademark").

In addition, the CARREFOUR trademark has been recognized as well-known by numerous prior UDRP panels.

The disputed domain name <carfourbank.live> was created on October 30, 2021, is not active and resolves to an error page.

The Complainant is also the owner of numerous domain names incorporating CARREFOUR trademarks, both within generic and national top-level-domains, created well before the disputed domain name, including the domain name <carrefour-banque.fr>, created on October 7, 2009.

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

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

###### **Identical or Confusingly Similar**

The Complainant contends that the disputed domain name <carfourbank.live> and the CARREFOUR trademarks are confusingly similar. The only difference between the disputed domain name and the CARREFOUR trademarks of the Complainant is that there is a typo with two missing letters (r and e) in the middle of the disputed domain name, "carfour" instead of "Carrefour", which does not prevent the confusing similarity between the two terms.

The disputed domain name <carfourbank.live> includes the generic term "bank" which is very closely connected to the Complainant's activities and reinforces confusing similarity.

The Complainant further contends that the CARREFOUR trademarks are recognizable within the disputed domain name and incorporation of a well-known trademark may be sufficient to establish that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

### No rights or legitimate Interests

The Respondent has no connection with the Complainant or any of its affiliates and has never sought or obtained any trademark registrations for the CARREFOUR trademark. The Respondent is identified as “Konan Miguel” as is associated with the organization “lampemagique”. Therefore, the Respondent is neither commonly known by the disputed domain name, nor was the Respondent known as such prior to the date on which he registered the disputed domain name. Inactive holding of a disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. The Respondent, therefore, has no rights or legitimate interests in the disputed domain name.

### Registered and used in bad faith

The Complainant submits that the Complainant and its trademarks are so widely known that it is inconceivable that the Respondent was not aware of the Complainant or its earlier trademark rights. Given the Complainant’s worldwide reputation and the ubiquitous presence of the Complainant’s CARREFOUR trademark in various markets, including Côte d’Ivoire, it is highly likely that the Respondent was aware of the CARREFOUR trademark long prior to registering the disputed domain name. The passive or inactive holding of the disputed domain name that incorporates a misspelling of a registered trademark, without a legitimate purpose, may indicate that a domain name is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Considering that the Respondent did not reply to the Complainant’s contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or 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; and (iii) that the disputed domain name has been registered and is being used in bad faith.

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

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Complainant submitted evidence that the CARREFOUR trademark has been registered internationally, well before the disputed domain name was registered by the Respondent. Thus, the Panel finds that the Complainant’s rights in the CARREFOUR trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to the Complainant’s CARREFOUR trademark.

It is well established that domain names which consist of common, obvious or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9 (“Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters ... (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers”). See *e.g. Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) (“This is clearly a ‘typosquatting’ case where the disputed domain name is a slight misspelling of a registered trademark to divert Internet traffic. In fact, the [...] domain name comprises the Complainant’s trademark [...] with a single misspelling of an element of the mark: a double consonant ‘S’ at the end”).

The disputed domain name in this Complaint is the misspelling of the Complainant’s CARREFOUR trademark, and imitates the <carrefour-banque.fr> domain name for the Complainant’s CARREFOUR banking and assurance services. Accordingly, the Panel finds that the Complainant’s CARREFOUR trademark is clearly recognizable within the disputed domain name and the disputed domain name clearly constitutes an attempt at typosquatting, by the Respondent.

Once the generic Top-Level-Domain (“gTLD”) is ignored as a standard registration requirement, as reflected in section 1.11.1 of the [WIPO Overview 3.0](#), the addition of the generic reference “banque” does not prevent a finding of confusing similarity of the disputed domain name with the Complainant’s trademark. As provided in section 1.8 of the [WIPO Overview 3.0](#), the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

In view of the Complainant’s widespread registration for the CARREFOUR trademark, and the Respondent’s clear attempt at typosquatting on the CARREFOUR trademark, the Panel concludes that the Complainant has established the first element of the Policy.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the CARREFOUR trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

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

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, *e.g., Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant’s contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its CARREFOUR trademark. Thus, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed. See, *e.g., Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

The Complainant further contends that the Respondent is not known under the disputed domain name, does not own any proprietary rights in the name “CARFOURBANK” or “CARFOUR BANK” and does not make any *bona fide* use - neither commercial nor noncommercial, of the same.

Based on the case records, the Panel established that the Respondent has not been commonly known by or associated with the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the

Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The disputed domain name resolves to a page displaying an Internet browser error message stating that “[t]his site can’t be reached”. Prior UDRP panels have found that the passive holding of a disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. See, by way of example, *Skyscanner Limited v. WhoisGuard Protected, WhoisGuard, Inc. / petrov petya*, WIPO Case No. [DCC2020-0003](#).

In the Panel’s view, the use of the disputed domain name by the Respondent does not constitute either a *bona fide* use or a legitimate noncommercial or fair use of the disputed domain name, as it is clearly used to target the Complainant and trade off the goodwill of the CARREFOUR trademark.

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name. See, for a similar finding, *Cash Converters Pty Ltd v. Mirriam Musonda-salati*, WIPO Case No. [D2014-1839](#). Under such circumstances the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The second element of paragraph 4(a) of the Policy is therefore satisfied.

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

The Policy establishes that, for purposes of paragraph 4(a)(iii), bad faith registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to respondent’s website or other online location, by creating a likelihood of confusion with complainant’s mark as to source, sponsorship, affiliation or endorsement of respondent’s website or location, or of a product or service on respondent’s website or location. See Policy, paragraph 4(b)(iv).

As it was established by the Panel, the disputed domain name was created on October 30, 2021, and resolves to a page displaying an Internet browser error message stating that “[t]his site can’t be reached”.

Under section 3.3 of the [WIPO Overview 3.0](#), the non-use of a domain name (including a “coming soon” page), would not prevent a finding of bad faith under the doctrine of passive holding. Previous UDRP panels have held that the passive holding of a domain name that incorporates a well-known trademark may confirm the bad faith use of a disputed domain name. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

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, *Andrey Ternovskiy dba Chatroulette v. WhoisGuard Protected, WhoisGuard, Inc. / Armando Machado*, WIPO Case No. [D2018-0082](#).

The Complainant has produced evidence showing that it owns registrations for the CARREFOUR trademark in various countries, of which dates of registration significantly precede the date of the registration of the disputed domain name.

In addition, the Complainant has credibly submitted that over the years it has developed substantial goodwill in the CARREFOUR trademark. The Panel is convinced that the Complainant’s trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and goodwill in its trademark.

See, e.g., *Carrefour SA v. hanib bas*, WIPO Case No. [D2020-1798](#); *Carrefour SA. v. Reliant-web Domain Admin / Jean Marie Grolleau / Joanne Elvert*, WIPO Case No. [D2021-2389](#); *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#).

The Respondent has failed to submit a response or to provide any evidence of actual or contemplated good faith use of the disputed domain name.

The Panel has also established that the Respondent's identity is masked by using a privacy service. While the use of a privacy shield is not necessarily objectionable itself, in the present case, it contributes to the accumulation of elements pointing to bad faith registration and use. See, *Solvay SA v. Domain Privacy Service Fbo Registrant / Mary Koehler*, WIPO Case No. [D2016-1357](#).

Furthermore, according to section 3.1.4 of the [WIPO Overview 3.0](#), 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.

The Complainant submits that it is well settled that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith. The Panel endorses that view. Given the reputation of the CARREFOUR trademark, registration in bad faith can be inferred. See, e.g., *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#).

Taking the above facts into consideration, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate. See *Telstra Corporation Limited v. Nuclear Marshmallows*, *supra*.

In light of the aforesaid, the Panel establishes that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

## 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 <carfourbank.live> be transferred to the Complainant.

*/Kateryna Oliinyk/*

**Kateryna Oliinyk**

Sole Panelist

Date: April 25, 2022