

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. yuri eros, מ"מ יינות ביתן בע"מ
Case No. D2022-1277

1. The Parties

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

The Respondent is yuri eros, מ"מ יינות ביתן בע"מ, Israel.

2. The Domain Names and Registrar

The disputed domain names <carrefouril.com> and <carrefour-israel.com> are registered with Domain The Net Technologies Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 11, 2022. On April 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which slightly differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center also sent an email communication to the Parties regarding the language of the proceeding. On April 21, 2022, the Complainant filed an amended Complaint including its request that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 April 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 16, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on June 23, 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, Carrefour SA, is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. With a turnaround of EUR 76 billion in 2018, the Complainant is listed on the index of the Paris Stock Exchange (CAC 40). The Complainant operates more than 12,000 stores in more than 30 countries worldwide. With more than 384,000 employees worldwide and 1.3 million daily unique visitors in its stores, the Complainant is a major and well-known worldwide leader in retail. The Complainant additionally offers travel, banking, insurance and ticketing services.

The Complainant owns a large portfolio of registered trademark registrations worldwide for word and formative CARREFOUR marks, including but not limited to the following:

- International Trademark Registration No. 351147 for CARREFOUR, registered on October 2, 1968;
- International Trademark Registration No. 353849 for CARREFOUR, registered on February 28, 1969; and
- Israel Trademark Registration No. 225856 for CARREFOUR, registered on March 6, 2011.

The Complainant also states that it is the owner of numerous domain names identical to its trademarks, both within generic and national top-level domains, including but not limited to the domain name <carrefour.com> which has been registered since October 25, 1995.

The disputed domain names <carrefouril.com> and <carrefour-israel.com> were both registered on March 8, 2022 and they resolve to inactive websites.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's registered CARREFOUR mark as the disputed domain names comprise of the Complainant's CARREFOUR mark in full and together with the addition of a hyphen and the terms "israel", and "il" which is the two-letter country code for Israel, respectively, and the generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain names. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain names because the dispute domain names do not resolve to any active websites.

The Complainant further argues that the disputed domain names were registered and are being used in bad faith as the Respondent was well aware of the Complainant and its CARREFOUR mark at the time of registration of the disputed domain names and there is no plausible good faith use to which the disputed domain names can be put to.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: “(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain names is Hebrew.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

“Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the Complainant is unable to communicate in Hebrew and may be unduly disadvantaged by having to conduct the proceeding in the Hebrew language;
- (ii) the disputed domain names are ASCII characters, and one of the disputed domain names includes the term “israel” in Latin characters, rather than Hebrew characters; and
- (iii) if translation is required, the Complainant would incur considerable costs and there would be an undue delay of the proceeding.

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain names contain the Complainant’s CARREFOUR mark in full and together with the addition of a hyphen and the terms “israel”, and “il” which is the two-letter country code for Israel, respectively, and the gTLD “.com”.

It is also well-established that the addition of a geographical term would not prevent a finding of confusing similarity between a disputed domain name and a complainant’s mark. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8; *Wal-Mart Stores*,

Inc. v. Kuchora, Kal, WIPO Case No. [D2006-0033](#); and *Hoffmann-La Roche Inc. v. Andrew Miller*, WIPO Case No. [D2008-1345](#)). Here, the addition of the terms “israel” and “il” and a hyphen to the CARREFOUR mark does not prevent a finding of confusing similarity.

Further, it is well established that the addition of a gTLD “.com” is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. (See [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the CARREFOUR mark long before the date that the disputed domain names were registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant’s trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

In addition, the Complainant states that the email address associated with the Respondent “[...]@ybitan.co.il” is related to an active online grocery store, Yenot Bitan, with a website in the Hebrew language at “www.ybitan.co.il”. It appears that Respondent serves as the Chief Information Officer at Yenot Bitan. The Complainant also stated that Yenot Bitan is a subsidiary of Electra Consumer Products, which the Complainant recently entered into a franchise agreement with to develop the Israeli market. The Complainant provided supporting evidence of a press release article dated March 6, 2022, and states that it never authorised the Respondent to use the CARREFOUR mark in a domain name. The Complainant argues and the Panel agrees that the existence of a commercial agreement between the Complainant and the Respondent’s employer’s parent company does not grant rights or legitimate interests in the disputed domain names to the Respondent. (See *Amway Corporation, Inc. (Amway) v. Rex Mehta*, WIPO Case No. [D2000-1118](#).)

The Complainant also provided evidence that the disputed domain names resolve to inactive websites, and the Respondent is not commonly known by the disputed domain names (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names sufficient to rebut the Complainant’s *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names resolve to inactive webpages. The test to apply to determine bad faith regarding the non-use of a domain name is summarized in the [WIPO Overview 3.0](#), section 3.3. While panels will look at the totality of 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.

In this case, the evidence shows that the Complainant’s mark is distinctive and has attained significant reputation. The strong reputation and distinctive character of the Complainant’s mark is evidence that the Respondent is unlikely to have registered the disputed domain names without knowledge of the Complainant’s mark and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is also the Complainant’s evidence that the Respondent could not have registered the disputed domain names without prior knowledge of the Complainant’s mark as the Respondent’s name has no connection with the Complainant’s CARREFOUR mark, which was registered long ago, and the Respondent’s employer’s parent company entered into a franchise agreement with the Complainant shortly before the registration of the disputed domain names.

The Complainant argues and the Panel agrees that the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated good faith use of the disputed domain names by the Respondent. It is well established that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a geographical term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. (See [WIPO Overview 3.0](#), section 3.1.4).

In addition, the Panel notes that the disputed domain names were registered only 2 days after the Complainant’s press release of March 6, 2022 regarding a new partnership involving the Complainant and the Respondent’s employer’s parent company in the Israeli market. In the particular circumstances of the present case, it is the Panel’s view that this occurrence is not a mere coincidence and is in fact telling of the Respondent’s bad faith by targeting the Complainant, its CARREFOUR mark and its goodwill when registering the disputed domain names.

The Panel also notes that the Respondent did not submit a Response in this proceeding which is another indication of the Respondent’s bad faith.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant’s mark, the fact that the disputed domain names resolve to inactive websites, and the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel draws the inference that the disputed domain names were registered and are being used 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 names, <carrefouril.com> and <carrefour-israel.com>, be transferred to the Complainant.

/Jonathan Agmon/
Jonathan Agmon
Sole Panelist
Date: July 7, 2022