

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. Colette Trudeau

Case No. D2022-4544

### **1. The Parties**

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

The Respondent is Colette Trudeau, France.

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

The disputed domain names <carrefourspacepersonnel.com> and <comptepersonnelcarrefour.com> are registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2022. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Contact Privacy Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 December 9, 2022. Because the Complaint has been submitted in English and the language of the registration agreement of the disputed domain name is French, the Center sent an email in relation to the language of the proceeding on December 8, 2022. On December 9, 2022, the Complainant submitted a request for English to be the language of the proceeding to which the Respondent has not replied.

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 December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 12, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on January 23, 2023. 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 Carrefour, a French and worldwide retail group, devoted to the operation of hypermarkets.

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.

The Complainant is also the owner of the domain name <carrefour.com> registered since 1995.

The disputed domain names are <carrefourspacepersonnel.com> and <comptepersonnelcarrefour.com>, both registered on October 29, 2022 and both resolving to inactive webpages.

Both disputed domain names shall be referred to as the Disputed Domain Name hereafter.

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

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

The Complainant claims that the Disputed Domain Name is confusingly similar to its earlier trademarks, that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and that the Disputed Domain Name has been registered and is being used in bad faith. The Complainant requests the transfer of the Disputed Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **Language of Proceedings**

The Complaint has been filed in English language.

At the time when it was filed, the identity, address or citizenship of the Respondent could not be known by the Complainant, and the Complainant could reasonably believe that the Registration Agreement of the disputed domain name was in English, as it found an English version of said Registration Agreement on the Registrar's website.

The Registrar later on disclosed that the Respondent was domiciled in France, and that the language of the Registration Agreement was French.

The Complainant has requested that the proceedings are nevertheless continued in English language.

The Panel observes that:

- The Complainant had no possibility to know, at the time when the Complaint was filed, that the Registration Agreement was in French language and that the Respondent was domiciled in France.
- The Respondent, even though properly notified of the Complaint both in English and French languages, has not presented any arguments to contest the Complainant's assertions and/or justify the registration and/or use of the Disputed Domain Name.

The Panel is of the opinion that continuing the proceedings in English is not likely to deprive the Respondent from a fair trial. The Respondent has received a notification from the Center both in English and French, and thus even if it was not able to understand English, had the possibility to communicate with the Center, or with the Complainant or the Complainant's representative, both located in France, to raise arguments or seek explanations. The Respondent did not do so.

On the other hand, deciding that the proceedings are pursued in French language would impose on the Complainant a further burden, in particular in terms of translation costs and loss of time, which would appear unfair at this stage of the procedure, considering the facts as exposed above.

Consequently, the Panel decides that the proceedings shall be continued in English language.

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

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

The Complainant is the owner of numerous CARREFOUR formative trademarks, as well as a domain name formed with CARREFOUR, all registered and used in relation with retail services.

The Disputed Domain Names are <carrefourspacepersonnel.com> and <comptepersonnelcarrefour.com>. Both reproduce the Complainant's trademark CARREFOUR in its entirety.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the terms "space personnel" and "compte personnel", would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed 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 disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* case showing that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the Disputed Domain Name.

The Complainant further contends that the Respondent is not known under the Disputed Domain Name, does not own any proprietary rights in the names <carrefourspacepersonnel> and/or <comptepersonnelcarrefour.com> and does not make any *bona fide* use - neither commercial nor noncommercial, of the same.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## C. Registered and Used in Bad Faith

The Complainant has substantiated the fact that its trademark CARREFOUR, which has been registered and used for years, now benefits from a high level of public's awareness, particularly – but not only – in France. Earlier UDRP decisions have acknowledged the Complainant's trademark reputation:

*Carrefour v. rabie nolife*, WIPO Case No. [D2019-0673](#); *Carrefour v. Jane Casares, NA*, WIPO Case No. [D2018-0976](#); *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#); *Carrefour v. Tony Mancini, USDIET Whoisguard, Inc.*, WIPO Case No. [D2015-0962](#); *Carrefour v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2015-0769](#); *Carrefour v. Park KyeongSook*, WIPO Case No. [D2014-1425](#); *Carrefour v. Yujinhua*, WIPO Case No. [D2014-0257](#); *Carrefour v. Karin Krueger*, WIPO Case No. [D2013-2002](#); *Carrefour S.A. v. Patrick Demestre*, WIPO Case No. [D2011-2248](#); *Carrefour v. groupe carrefour*, WIPO Case No. [D2008-1996](#); *Carrefour SA v. Eric Langlois*, WIPO Case No. [D2007-0067](#).

When the identity of the Respondent was disclosed by the Registrar, it was found that the said Respondent had declared a French name and two places of residence in France. Due to the longstanding use of the Complainant's mark in France, the Respondent could not reasonably be unaware of the Complainant's rights when it registered the Disputed Domain Name.

It is also noted that the Center was not able to deliver the Complaint to the Respondent, as the email addresses and postal addresses declared are not valid. In all likelihood, the Respondent used false contact details, in order to evade liability. This is, in the Panel's view, a further hint that the Respondent is acting in bad faith.

The Panel observes besides that the Respondent made the choice of associating the trademark CARREFOUR with the terms "space personnel" and "compte personnel", which are likely to be understood as referring to a personal account. It is now customary for companies to create in their websites some "my account" sections, enabling their customers to create their own accounts for the purpose of facilitating orders, payments, deliveries, tracing orders and invoices historic and the like.

For this Panel it is a clear indication that the Respondent necessarily had the Complainant's trademark in mind when it registered the Disputed Domain Name, and intended to mislead the Complainant's customers and Internet users searching for their own personal accounts with the Complainant.

The Panel infers from the above that the Respondent acted in bad faith when it registered the Disputed Domain Name.

It is further noted by the Panel that the Disputed Domain Name is not being actively used by the Respondent, and does not resolve to any active web page with substantive content.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name, does not prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark and no response to the Complaint having been filed. UDRP panels may draw inferences about whether a domain name is used in bad faith given the circumstances surrounding registration.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"From the inception of the UDRP, 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. 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."

Such passive holding is to be regarded as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)). See also, *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#):

"Respondent knew or should have known that the Domain Name included Complainant's CREDIT MUTUEL well-known trademark. [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith."

The Panel further finds that passive holding of the Disputed Domain Name in this case does not prevent a finding of 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 <carrefourspacepersonnel.com> and <comptepersonnelcarrefour.com> be transferred to the Complainant.

*/William Lobelson/*

**William Lobelson**

Sole Panelist

Date: January 31, 2022