

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. Fernando gomes, Ivam Delfino Duarte  
Case No. D2023-4195

### **1. The Parties**

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

Respondents are Fernando gomes and Ivam Delfino Duarte, Brazil.

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

The disputed domain names <carrefoursolucoesoficial.com>, <carrefoursolucoess.com>, <carrefoursolucoes21.com>, and <carrefour500solucoes.com> are registered with Squarespace Domains II LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for multiple underlying registrants which differed from the named Respondent (“Contact Privacy Inc. Customer 7151571251”) and contact information in the Complaint. The Registrar also disclosed that the Complaint was submitted in a different language than the language of the registration agreement related to the disputed domain names.

The Center sent email communications to Complainant on October 11, 2023, providing the registrant and contact information disclosed by the Registrar and inviting Complainant (1) to amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and that all domain names are under common control, or (2) indicate which of the domain names would no longer be included in the current proceeding. On October 12, 2023, Complainant filed the Amended Complaint, including arguments and material relating to the question of multiple underlying registrants.

The Center’s October 11, 2023 email also informed Complainant that the registration agreement was in Portuguese and requested Complainant to file an amended Complaint addressing the question of the appropriate language of this proceeding under the Rules, paragraph 11. In response, Complainant’s

October 12, 2023 Amended Complaint reiterated Complainant's request for English to be the language of the proceedings, with supporting arguments as described below. Although Respondents were copied on the Center's Portuguese and English October 11, 2023 communications, Respondents did not object to the requests.

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 Respondents of the Complaint in both English and Portuguese, and the proceedings commenced on October 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2023. Respondents did not submit any response. Accordingly, the Center notified Respondents' defaults on November 8, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on November 13, 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**

Complainant is one of the world's largest retailers, operating thousands of hypermarkets, groceries and wholesale operations in many countries. Complainant owns many registrations for its CARREFOUR family of trademarks, including for example CARREFOUR, International Trademark Registration No. 191353 registered on March 9, 1956, in Class 3 and International Trademark Registration No. 1684738 registered on April 5, 2022, in Classes 9, 35, 36, 41 and 42 (designating Brazil among other countries).

The disputed domain names were registered on the following dates: <carrefoursolucoesoficial.com> and <carrefoursolucoes21.com> on August 5, 2023; <carrefoursolucoess.com> on August 4, 2023; and <carrefour500solucoes.com> on August 7, 2023. None of the disputed domain names resolve to active webpages.

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

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

Complainant avers that it pioneered the concept of hypermarkets in the early 1960s and that it operates in more than 30 countries, including Brazil, employing 384,000 employees worldwide and enjoying 1.3 million daily unique visitors to its webstores.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain names are identical or confusingly similar to Complainant's trademarks, (2) Respondents have no rights or legitimate interests in the disputed domain names, and (3) the disputed domain names were registered and are being used in bad faith, all in violation of the Policy. On this basis, Complainant seeks transfer of the disputed domain names.

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

Respondents did not reply to Complainant's contentions.

## 6. Discussion and Findings

### A. Procedural Matters

#### 1. Language of Proceedings

As noted above, the Complaint was submitted in English. The appropriate language of proceedings must be determined before taking any further steps.

The Rules, paragraph 11(a), provide that UDRP Complaints in most instances should be submitted in 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.” As confirmed by the Registrar, the registration agreement is in Portuguese.

In the Amended Complaint, Complainant provided the following arguments to support its request that the proceedings be conducted in English:

1. The choice of Portuguese as the language of the registration agreement does not mean that Respondents are not able to defend the case in English.
2. English is the business language of international agreements and disputes and Respondents’ registration of four domain names incorporating the Complainant’s well-known trademark means that Respondent is involved in the “international business of domain names.”
3. Because Respondent has no rights or legitimate interest in the disputed domain names and there is “no legitimate” use of the disputed domain names. Complainant already bears all the costs related to this procedure and under these circumstances, it would be unfair to require Complainant to add translation costs.
4. There are several UDRP decisions with very similar domain names composed with CARREFOUR and the Portuguese term “solucoes” that were determined in English with no proceedings in Portuguese, despite the respondents’ locations being in Panama, Romania and Brazil.
5. Since Respondent has been notified in Portuguese of the proceedings and of Complainant’s request for English language, Respondent has had the opportunity to accept or to object to Complainant’s request.

Until now, the Center has corresponded with all parties to this proceeding in both Portuguese and English. In its October 18, 2023 Notification of Complaint and Commencement of Administrative Proceedings, the Center relayed in English and Portuguese that it had decided to 1) accept the Complaint as filed in English; 2) accept a Response in either English or Portuguese; and 3) appoint a Panel familiar with both languages, if available. The Center further noted that in accordance with paragraph 11 of the Rules, the Panel has the authority to determine the language of proceedings and that the Panel had discretion to consider subsequent communications of the parties regarding the language issue.

Paragraph 11 of the Rules must be applied in light of the overarching principles set forth in paragraphs 10(b) and 10(c) of the Rules that parties are to be treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition. See *e.g. General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#), cited in *Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack*, WIPO Case No. [D2015-0070](#) (“account should be taken of the risk that a strict and unbending application of paragraph 11 of the Rules may result in delay, and considerable and unnecessary expenses of translating documents”).

The Panel has determined that the current proceedings may be conducted in English. Among the circumstances taken into consideration by the Panel to support this conclusion are (1) the unnecessary burden, expense, and undue delay entailed in translation of the Complaint and extensive annexes into Portuguese; and, importantly, (2) the fact that Respondents were given a fair opportunity to present their case, to raise objections to the request for English language proceedings or to inform the Center of their language preference, however Respondents refrained from making any submissions or responses.

In these circumstances, the Panel finds that it is appropriate to exercise its discretion according to paragraph 11(a) of the Rules and allow the proceedings to be conducted in English. Doing so should not cause any undue burden, undue delay or unfairness to the parties. See *Orlane S.A. v. Yu Zhou He / He Yu Zhou*, WIPO Case No. [D2016-1763](#); see also *eBay Inc. v. NicSoft, Antonio Francesco Tedesco*, WIPO Case No. [D2014-0812](#) (composition of disputed domain name was among key factors supporting panel's determination that English-language proceedings, rather than Italian, were appropriate).

## **2. Consolidation – Multiple Underlying Respondents and Domain Names**

As a second procedural matter, the Panel agrees that Complainant may also maintain this proceeding respecting four separate disputed domain names against the two separately named Respondents, as elaborated below.

Complainant cites these factors to demonstrate that the disputed domain names are under common control in support of its request to consolidate the multiple disputed domain names and multiple underlying respondents under Policy Paragraph 4(f):

- 1 The four disputed domain names have a very similar composition with the following as common parts: “carrefour” + “solucoes” + the same generic Top-Level Domain (“gTLD”) “com”.
- 2 The four disputed domain names all include the Portuguese word “solucoes”
- 3 The Whois records all refer to the same unique customer number “7151571251,” while the postal addresses provided to the Registrar are both located in Brazil.
4. The four disputed domain names were created within an interval of only three days.
5. The four disputed domain names were registered with the same Registrar.
6. The four disputed domain names are each connected with Cloudflare’s servers.

Noting particularly that the privacy registration service listed the same customer number as registrant of all four disputed domain names, in addition to the other factors listed by Complainant, the Panel finds that the disputed domain names are under common control, effectively “registered by the same domain-name holder” within the meaning of the Rules paragraph 3(c).

Exercising its discretion under Policy Paragraph 4(f) and pursuant to Rule 10(e) the Panel finds that consolidation of the multiple domain names and respondents will be procedurally efficient and be fair and equitable to all parties. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.

## **B. Substantive Rules of Decision**

For Complainant to prevail under the Policy, it must be established that (1) the disputed domain names are identical or confusingly similar to Complainant’s CARREFOUR marks, (2) Respondents have no rights or legitimate interests in the disputed domain names, and (3) the disputed domain names were registered and are being used in bad faith. Policy, paragraph 4(a).

The fact that Respondents have not provided any Response does not, by itself, mean that Complainant prevails. [WIPO Overview 3.0](#), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

## **C. Identical or Confusingly Similar**

The Panel agrees with Complainant’s allegation that the disputed domain names are confusingly similar to Complainant’s CARREFOUR marks.

UDRP panels commonly disregard gTLDs in determining whether a disputed domain name is identical or confusingly similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the gTLD “.com”, the Panel notes that the entirety of Complainant's CARREFOUR mark is included in all of the disputed domain names <carrefoursolucoesoficial.com>, <carrefoursolucoess.com>, <carrefoursolucoes21.com>, and <carrefour500solucoes.com>. Each of the disputed domain names adds to the CARREFOUR mark only the following words and characters, respectively: “solucoesoficial,” “solucoess,” “solucoes21,” and “500solucoes.” The Panel finds that the addition of these terms does not

prevent findings of confusing similarity. See, e.g., [WIPO Overview 3.0](#), Section 1.7 (“[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”); *id.*, section 1.8 (“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 names are confusingly similar to Complainant's CARREFOUR marks and concludes that the first element of paragraph 4(a) of the Policy is established.

#### **D. Rights or Legitimate Interests**

The Panel also concludes that Respondents have no rights or legitimate interests in the disputed domain names.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts Complainant's undisputed allegations that Respondents have no relevant trademark rights and no authorization or license to use Complainant's marks in the disputed domain names. The Panel also accepts Complainant's averment that Respondents are not commonly known by the disputed domain names.

Since the disputed domain names do not route Internet users to authorized products or services associated with Complainant's marks, the Panel concludes that there is no *bona fide* use.

In light of the evidence and allegations of Complainant, the Panel holds that Respondents are not making a noncommercial legitimate or fair use of the disputed domain names and that Complainant has established a *prima facie* case. Respondents have neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondents have no rights or legitimate interests in the disputed domain names and that the second element of Policy, paragraph 4(a) is established.

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

The Panel also finds that the third element of Policy, paragraph 4(a) is established.

Complainant's CARREFOUR mark is well known and was used in commerce for many decades before Respondents registered the disputed domain names. Complainant also has a very substantial Internet presence and operates several retail operations in Brazil, the country of Respondents' listed locations. The Panel agrees with Complainant that, under the Policy, the mere registration of a disputed domain name which completely includes Complainant's widely-known CARREFOUR trademark by Respondents, who are not affiliated with Complainant, creates a presumption of bad faith. *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#) (use of famous trademark in disputed domain name "so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith"); [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that, under the circumstances, Respondents' passive holding of the disputed domain names, Respondents' failure to maintain accurate contact details as required in their agreements with the Registrar, and their failure to respond to the Complaint are further evidence of use of the disputed domain names in bad faith. E.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3.

Therefore, the Panel holds that Respondents registered and are using the disputed domain names 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 <carrefoursolucoesoficial.com>, <carrefoursolucoess.com>, <carrefoursolucoes21.com>, and <carrefour500solucoes.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: November 27, 2023