

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Contact Privacy Inc. Customer 0164405644 / Imaho naho,
Imahonos

Case No. D2022-2664

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 0164405644, Canada / Imaho naho, Imahonos, France.

2. The Domain Name and Registrar

The disputed domain name <carrfourbanque-cddtt.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 21, 2022. On July 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 28, 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 July 28, 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 August 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on September 9, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a multinational retail company headquartered in France. The Complainant is also active in the banking sector.

The Complainant is the owner of several trade marks for CARREFOUR including in France where the Respondent appears to be based. The Complainant's CARREFOUR trade marks include the following:

- International Trade Mark registration No. 351147 for CARREFOUR, registered on October 2, 1968.

The Complainant is also the owner of the following trade mark:

- French Trade Mark registration No. 3585968 for BANQUE CARREFOUR, registered on July 2, 2008.

The Complainant is also the owner of several domain names reflecting its CARREFOUR trade mark.

The Domain Name was registered on May 15, 2022. The Domain Name used to resolve to an error page and had pointed to a page containing pay-per-click ("PPC") links related to banking and loans at the time the Panel accessed the website associated with the Domain Name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the CARREFOUR trade mark in which the Complainant has rights, as the Domain Name incorporates a recognizable misspelling of the CARREFOUR trade mark of the Complainant (with the omission of the letter "e") and a recognizable misspelling of the BANQUE CARREFOUR trade mark (with the same misspelling and inverted words), with the addition of the term "cddtt". The Complainant considers that such addition does not prevent the confusing similarity between the Domain Name and the Complainant's trade marks. The Complainant also contends that the addition of the generic Top-Level Domain ("gTLD") ".com" does not change the overall impression of the Domain Name being connected to the Complainant's CARREFOUR trade mark.

The Complainant asserts that the Respondent has no rights in "carrefour" or "carrefour banque" and that the Respondent is not commonly known by the Domain Name. The Complainant contends that the Respondent is not authorized by the Complainant to use its CARREFOUR trade mark. Furthermore, the Complainant contends that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the Domain Name in relation to a *bona fide* offering of goods or services as the Domain Name triggered an error message. The Complainant concludes that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant contends that the Respondent has registered and used the Domain Name with full knowledge of the Complainant's CARREFOUR trade mark and the Complainant refers to prior UDRP panels finding that the Complainant's CARREFOUR trade mark is well-known. The Complainant also stresses that the CARREFOUR trade mark significantly predates the Domain Name. In terms of use of the Domain Name

in bad faith, the Complainant submits that the use of the Domain Name may not be considered a good faith use as, by simply maintaining the Domain Name, the Respondent is preventing the Complainant from reflecting its trade marks in the corresponding Domain Name. In addition, the Complainant points to the fact that the Domain Name resolves to an error page to conclude that this does not prevent a finding of bad faith under the doctrine of passive holding. Finally, the Complainant highlights that given the renown of its trade marks it cannot think of any future use of the Domain Name by the Respondent that could be in good faith. The Complainant concludes that the Domain Name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met for the Domain Name, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in the CARREFOUR trade mark, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the CARREFOUR trade mark in which the Complainant has rights.

At the second level, the Domain Name consists of the term "carrfourbanque-cddtt". The Panel is satisfied that the first eight letters "carrfour" of the Domain Name are a deliberate misspelling of the CARREFOUR trade mark of the Complainant. The Panel finds that this one character difference between the trade mark CARREFOUR and the term "carrfour" in the Domain Name does not prevent the confusing similarity between the Complainant's trade mark and the term "carrfour" in the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

Then, there is the addition of the terms "banque-cddtt". The Panel finds that this addition does not prevent a finding of confusing similarity between the Complainant's CARREFOUR trade mark and the Domain Name.

Overall, the Panel finds that the well-known CARREFOUR trade mark of the Complainant is instantly recognizable in the Domain Name.

Then there is the addition of the gTLD “.com”. As is generally accepted, the addition of a gTLD such as “.com” is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name.

Having reviewed the Complainant’s assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

The Complainant has stated that the Respondent has no rights in the Domain Name and that it has not licensed or otherwise authorized the Respondent to make any use of its CARREFOUR trade mark. There is no indication that the Respondent is commonly known by the Domain Name.

The Domain Name is currently used to point to a page with targeted PPC links including “crédit facile et urgent” or “carte bancaire” which in turn redirect to competitors of the Complainant’s banking business, such as American Express. This use of the Domain Name cannot be seen as a legitimate noncommercial or fair use of the Domain Name nor can it be seen as a *bona fide* offering of goods or services. See section 2.5.3 of the WIPO Overview 3.0. The Panel is satisfied that the Respondent is using the Domain Name to exploit the goodwill of the Complainant’s trade mark, with an intent for commercial gain and to misleadingly divert consumers.

As for the fact that the Domain Name used to trigger an error message at the time the Complaint was filed, this would not be a circumstance demonstrating that the Respondent could be considered as having rights or legitimate interests in the Domain Name.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, 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.”

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The first part of the Domain Name (“carrfour”) consists of a clear misspelling of the CARREFOUR trade mark of the Complainant. The Panel finds that when registering the Domain Name, the Respondent had the Complainant’s trade mark in mind and targeted it specifically by registering the Domain Name which contains a deliberate misspelling of the Complainant’s CARREFOUR trade mark where the letter “e” is omitted. The Complainant has provided ample evidence of the substantial renown of the CARREFOUR trade mark, especially in France where the Respondent appears to be based, so the fact that the Respondent decided to register the Domain Name including a clear misspelling of the CARREFOUR trade mark strongly suggests that the Respondent had the Complainant’s CARREFOUR trade mark in mind and targeted it specifically.

This is even more likely given (i) the choice of terms added to the Complainant’s misspelt CARREFOUR trade mark in the Domain Name which relate to the Complainant’s banking business, (ii) the fact that the Domain Name was registered relatively recently and many years after the registration of the Complainant’s CARREFOUR trade mark and (iii) the fact that the Domain Name was registered by providing incorrect registration data to the anonymization service provider (the street name does not exist and the post code does not exist either).

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel is satisfied that the Domain Name is used in bad faith.

The Domain Name is currently used to point to a page with targeted PPC links including “crédit facile et urgent” or “carte bancaire” which in turn redirect to competitors of the Complainant’s banking business, such as American Express. This type of use whereby the Domain Name indirectly redirects users to competitors of the banking business of the Complainant can only be seen as use in bad faith of the Domain Name. The Panel thus considers that by using the 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 trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product on the Respondent's website.

As for the past use of the Domain Name at the time the Complaint was filed, the Complainant submitted that it used to trigger an error message and was thus possibly used passively. Given the current use of the Domain Name this is immaterial but, in any event, passive use itself would not have prevented a finding of the Respondent's bad faith given the overall circumstances here, noting in particular the renown of the Complainant's CARREFOUR trade mark and the Respondent's default.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name is being used in bad faith.

Accordingly, the Complainant has met its burden of showing that the Domain Name was registered and is 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 Domain Name <carrfourbanque-cddtt.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: September 23, 2022