

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. junjun company, junjun clean
Case No. D2022-4067

1. The Parties

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

The Respondent is junjun company, junjun clean, China.

2. The Domain Names and Registrar

The disputed domain names <carrefourbrc.com>, <carrefourbri.com>, and <carrefourbri.com> are all registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 November 4, 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 November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on December 1, 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 retailer (also offering banking, insurance and ticketing services) based in France. It developed the hypermarket concept in 1968 and is publicly listed on the Paris Stock Exchange. The Complainant operates more than 12,000 stores in more than 30 countries. With more than several hundred thousand employees worldwide and 1.3 million daily unique visitors to its stores and a turnover of 76 billion euros in 2018, the Complainant is a significant international retailer. The Complainant owns numerous trade mark registrations worldwide for its CARREFOUR mark, including International trade mark No. 351147 for CARREFOUR registered on October 2, 1968 which is designated in several countries. The Complainant owns the domain name <carrefour.com> from which it operates its main corporate website and it enjoys a very considerable social media presence.

The disputed domain name <carrefourbrc.com> was registered on September 5, 2022 and resolves to an error page. The disputed domain name <carrefourbri.com> was also registered on September 5, 2022 but resolves to a website offering products such as clothing and has at the top of it the brand “CARREFOURBRI” and at the foot of the page in prominent letters is the name “Hong Kong Ailihua Technology Co., Limited” together with a Hong Kong based address. The disputed domain name <carrefourbrl.com> was registered on August 26, 2022 and resolves to a website promoting clothing and accessories priced in euros with the brand “carrefourbrl.com” at the top of the page and features the same Hong Kong company name and address at the foot of the page.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade marks in the CARREFOUR mark as noted above. It says that each of the disputed domain names wholly incorporate its registered trade mark and each is therefore confusingly similar to its registered mark. The Complainant asserts that the incorporation of additional elements, such as, “brc”, “bri” or “brl” does not diminish or prevent a finding of confusing similarity as the three letter additions to the CARREFOUR mark in each of the disputed domain names do not change the overall impression given by each of the disputed domain names as the CARREFOUR mark is immediately recognisable within each of the disputed domain names.

The Complainant maintains that after performing trade mark searches there is no evidence that the Respondent has acquired trade mark rights in the term “carrefour” and it says that there is also no evidence that the Respondent is commonly known by the disputed domain names, whether as an individual, business or other organization. It says that the Respondent has not used or made preparations to use the disputed domain name names in relation to a *bona fide* offering of goods or services. The Complainant notes that that the disputed domain name <carrefourbrc.com> resolves to an error page and that the other two disputed domain names resolve to pages offering a range of products and that by registering and using domain names, which use the well-known CARREFOUR marks, the Respondent has specifically targeted the Complainant in order to gain an unfair advantage.

According to the Complainant, the disputed domain names are inherently likely to mislead Internet users, with a risk of implied affiliation and there is no evidence that the Respondent has been making a legitimate non-commercial or fair use of the disputed domain names. In addition, in light of the worldwide renown of the Complainant's trade mark, the Complainant sees no plausible use of the disputed domain names that would be legitimate fair and non-commercial.

The Complainant submits that the Complainant and its trade marks were so widely well-known, and that it is inconceivable that the Respondent could not have been aware of the Complainant or of its earlier trade mark rights when it registered the disputed domain names. It says that the Respondent necessarily had the Complainant's name and trade mark in mind when registering the disputed domain names and that the Respondent's choice of the disputed domain names cannot have been accidental and must have been

influenced by the fame of the Complainant and its earlier trade marks.

The Complainant submits that it is highly likely that the Respondent chose the disputed domain names because of their identity with or similarity to a trade mark in which the Complainant has rights and legitimate interests. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the disputed domain names.

Further, the Complainant says that its' trade mark registrations significantly predate the registration date of the disputed domain names and that the Complainant must have had knowledge of them at the time of registration.

Finally, says the Complainant, the current use of the disputed domain names does not amount to good faith use. By simply maintaining the disputed domain names, the Respondent is preventing the Complainant from reflecting its trade mark in corresponding domain names which of itself is use in bad faith.

In addition, says the Complainant, the current use of two of the disputed domain names in connection with an online store is further evidence of bad faith on the part of the Respondent. It alleges that the Respondent is actively trying to benefit from the renown and fame of the Complainant and its trade marks in order to make a commercial gain, by creating confusion in the mind of an Internet user of average attention.

The Complainant further submits that the Respondent's efforts to conceal its identity through the use of fanciful contact details and in breach of the registration agreement (for example, it uses according to the Complainant a false name, the postal code "85014" which does not correspond to the province of Sichuan (China), and a telephone number that has no international prefix) can be construed as further evidence that the disputed domain names were registered in bad faith.

Overall, says the Complainant, there is no plausible reason for the Respondent to have registered or to use the disputed domain names and this all points to registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns various registered trade mark rights for its CARREFOUR mark, including under International trade mark No. 351147 for CARREFOUR registered on October 2, 1968. The CARREFOUR mark is wholly incorporated into each of the disputed domain names and each of the disputed domain names is therefore confusingly similar to the Complainant's registered trade mark right. The addition in the disputed domain names respectively of one or other of the three letter combinations "brc", "bri" and "brl" does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that after performing trade mark searches there is no evidence that the Respondent has acquired trade mark rights in the term "carrefour" and that there is no evidence that the Respondent is commonly known by any of the disputed domain names, whether as an individual, business or other organization. The Complainant has submitted that the Respondent has not used or made preparations to use any of the disputed domain name names in relation to a *bona fide* offering of goods or services and in this regard has noted that the disputed domain name <carrefourbrc.com> resolves to an

error page and that the other two disputed domain names resolve to pages offering a range of products and effectively trade off the reputation attaching to the well-known CARREFOUR marks.

The Complainant has also asserted that the disputed domain names are inherently likely to mislead Internet users because of a risk of implied affiliation with the Complainant's CARREFOUR mark and that there is no evidence that the Respondent has made a legitimate non-commercial or fair use of the disputed domain or that there is any plausible use that the Respondent could make of any of the disputed domain names which would be legitimate fair and non-commercial.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Complainant's case has not been rebutted by the Respondent, the Panel finds for these reasons and as set out under Part C below, that the Complainant has successfully made out its case and that the Complaint also succeeds under this element of the Policy

C. Registered and Used in Bad Faith

As set out under section 4 above, each of the disputed domain names were registered in 2022 many decades after the Complainant's registration of its trade mark CARREFOUR. As acknowledged by this Panel and many previous panels, the Complainant enjoys a very substantial reputation attaching to its CARREFOUR mark as a consequence of its very substantial international business. In these circumstances and considering the China-based Respondent's use of two of the disputed domain names to divert consumers to websites that carry brands incorporating the Complainant's CARREFOUR mark and which offer products for sale in euros and therefore most likely to a European target market, the Panel considers that it was most likely that the Respondent was very well aware of the Complainant and its business and of the CARREFOUR mark when it registered each of the disputed domain names.

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The disputed domain names <carrefourbri.com> and <carrefourbrl.com> redirect Internet users respectively to websites which each feature a brand title incorporating the CARREFOUR mark and offer products such as clothing and/or bags at prices in euros which suggests a targeting at European consumers. Using the disputed domain names which incorporate the Complainant's very well reputed trade mark in this manner is likely to confuse Internet users who are familiar with the Complainant's stores and services in Europe into thinking that there is some connection or affiliation with the Complainant's business when this is not the case. This is so even though at the foot of each website there is the name "Hong Kong Ailihua Technology Co., Limited" together with a Hong Kong based address without any disclaimer. Accordingly, the Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are fulfilled and that there is evidence of registration and use in bad faith of the disputed domain names <carrefourbri.com> and <carrefourbrl.com>.

The disputed domain name <carrefourbrc.com> resolves to an error site and there is no evidence that it has been actively used by the Respondent to date. Passive holding of the disputed domain name may be found to be in bad faith if the factors that previous panels have found as being relevant in applying the passive holding doctrine are found to be present as set out at section 3.3 of the WIPO Overview of Panel Views on Selected UDRP Questions (Third Edition). These 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 CARREFOUR mark is highly distinctive and enjoys a very considerable degree of renown in a number of countries. The Respondent has failed to submit a substantive response other than what appears to be a standard automatically generated email response when the Center sent the Complaint to it.

Further the Respondent has sought to conceal its identity using a privacy service and appears, based on the Complainant's unchallenged assertions, to have provided false contact details for the domain name registrations. Finally, each of the disputed domain names contain the Complainant's very distinctive CARREFOUR mark and the Respondent has failed to provide any explanation for its registration or use. The Panel sees no plausible explanation for the Respondent's use and in these circumstances the Panel finds that this disputed domain name has been passively held in bad faith.

Having found that that each of the disputed domain names has been both registered and used in bad faith, the Panel finds that the Complaint also succeeds under this element of the Policy.

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, <carrefourbrc.com>, <carrefourbri.com>, and <carrefourbrl.com>, be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: December 14, 2022