

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. José Rodrigo Serrano Mateos, ADL Partner Hispania, S.L.U.
Case No. D2022-4153

1. The Parties

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

The Respondent is José Rodrigo Serrano Mateos, ADL Partner Hispania, S.L.U., Spain.

2. The Domain Name and Registrar

The disputed domain name <experienciasclubcarrefour.com> is registered with Soluciones Corporativas IP, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on November 3, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center sent an email communication in English and Spanish to the parties on November 7, 2022 regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Spanish. The Complainant submitted a request for English to be the language of the proceeding on November 8, 2022. The Respondent did not comment on the language of the proceedings.

The Center verified that the 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 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. Aside from an informal communication received on November 8, 2022, the Respondent did not submit any response. Accordingly, the Center notified the Commencement of Panel Appointment Process on December 5, 2022.

The Center appointed Martin Michaus Romero as the sole panelist in this matter on December 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

The Complainant:

- 1) Is a world leader in retail and a pioneer of the concept of hypermarkets back in 1968, with a turnaround of EUR 76 billion in 2018 and is listed on the index of the Paris Stock Exchange (CAC40).
- 2) Operates more than 12,000 stores in more than 30 countries worldwide.
- 3) Has more than 384,000 employees worldwide and 1.3 million unique visitors in stores.
- 4) Is without a doubt a major and well-known worldwide leader in retail.
- 5) Additionally offers travel, banking, insurance and ticketing services.
- 6) Owns several hundred trademark rights worldwide with the “carrefour” term. It is the owner of the following trademarks registered well before the registration of the disputed domain name:
 - International Trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed and designating goods in international classes 01 to 34.
 - International Trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42.
- 7) The trademark CARREFOUR enjoys a wide-spread continuous reputation as stated by a large number of decisions: CARREFOUR is a well-known trademark in France and elsewhere. See e.g., *Carrefour v. Contact Privacy Inc. Customer 0155401638 / Binya Rteam*, WIPO Case No. [D2019-2895](#) and *Carrefour v. Perfect Privacy, LLC / Milen Radumilo*, WIPO Case No. [D2019-2610](#).
- 8) The fame and notoriety of the CARREFOUR trademark is also evidenced on the Internet. The Facebook page is currently “liked” by more than 11 million Internet users.
- 9) Is also owner of numerous domain names identical to its “Carrefour” trademarks, both with generic and national top level domain names. The carrefour.com has been registered since 1995.
- 10) The disputed domain name, <experienciascarrefour.com was registered 2022-01-27, and accorded to the evidence submitted with the Complaint, resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant states in its Complaint that:

- 1) The Respondent registered the disputed domain name, which is confusingly similar to the Complainant's well-known trademark CARREFOUR without the Complainant's knowledge or

authorization;

- 2) The Respondent registered the disputed domain name to create confusion amongst Internet users, that the disputed domain name is affiliated with the Complainant;
- 3) The second part of the disputed domain name is made up of the generic terms “experiencias club”. The addition of the generic term to a well-known trademark in a domain name does nothing to diminish the likelihood of confusion arising from the disputed domain name.
- 4) The Respondent has no rights or legitimate interests in the disputed domain name; and
- 5) The Respondent likely intended to confuse the Complainant’s customers or potential customers, considering the complete reproduction of the CARREFOUR trademark in the disputed domain name.

Accordingly, per the Complainant, the disputed domain name was selected, registered and used by the Respondent in bad faith and not for a *bona fide* offering of goods or services, nor any fair use, but rather to mislead Internet users, disrupt the Complainant’s business, and affect the reputation or notoriety of the CARREFOUR trademark.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. However, the Respondent sent an email communication stating that:

“I don’t know what this is about, and I don’t know you (for all I know, you could be phishing or a malicious actor).

We are a marketing agency in Spain, and we work for Carrefour in Spain. If Carrefour Spain wants their domain name transferred to them, they just need to say so.

If you are a legitimate entity, please instruct Carrefour Spain to talk to us directly (they know us!!!) and we will be glad to transfer the domain name to them.”

Language Proceedings

The Complaint was filed in English. The Complainant stated that it is not able to communicate in Spanish, therefore, it is not in a position to conduct this proceeding in Spanish without a great deal of additional expenses and delay due to the need for translation of the Complaint. It also stated that the Respondent owns or used to own several domain names containing generic English terms.

The Complainant requested that the language of the proceedings to be English and the Respondent did not comment on the language of the proceeding. The Complainant provided supported arguments and evidence to justify its petition, based on Section 4.5 of the Overview of Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), that includes conditions such as: the complainant would be prejudiced by undue expense, delay or complication; evidence showing that the respondent can understand the language of the complaint; the content on the web page under the disputed domain name; and prior cases involving the respondent in a particular language and prior correspondence between the parties. The Panel notes that certain of these conditions occur in this case. The case file shows that the Respondent, can effectively communicate in English, since it sent an informal communication in English to the Center on November 8, 2022.

Considering the arguments and evidence provided by the Complainant, the no objection of the Respondent, and that this should be an expeditious procedure, the Panel according to paragraph 10 b) and c), and 11 of the Rules for the UDRP, determines that the language of the proceeding shall be English.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Considering that the Respondent did not reply to the Complainant’s contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has submitted evidence of its rights in the CARREFOUR trademark.

The disputed domain name is confusingly similar to the Complainant’s CARREFOUR trademark. The disputed domain name reproduces the Complainant’s trademark CARREFOUR in its entirety, with the addition of the terms “Experiencias Club” at the end.

The CARREFOUR trademark is included in the disputed domain name, and the generic Top-Level Domain (“gTLD”), “.com”, as well as the addition of “Experiencias Club”, do not prevent a finding of confusing similarity between the disputed domain name and the CARREFOUR trademark.

The Panel finds that the Complainant satisfies paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has not received permission or authorization to use the Complainant’s trademark. The Respondent did not substantively reply to the Complainant’s contentions, and therefore has not provided any evidence to demonstrate anything to the contrary. It should be pointed out that nothing in the available record indicates that the Respondent is an individual, business, or corporation known by the name “Carrefour” or a name corresponding to the disputed domain name. Furthermore, the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services, nor for a legitimate or noncommercial fair use that might give rise to rights or legitimate interests in the disputed domain name.

There is no evidence that the Respondent is commonly known by the disputed domain name, has made demonstrable preparation to use it for a *bone fide* offering of goods or services, owned a trademark related to the disputed domain name or is making a legitimate noncommercial or fair use of the disputed domain name. Accordingly, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent has failed to rebut. The Respondent’s argument that they are a marketing agency in Spain, and that they work for Carrefour in Spain, without any supporting evidence, does not give rise to rights or legitimates interests.

The Panel finds that the Complainant satisfies paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to the evidence submitted by the Complainant, it is clear to the Panel that the registration and the use of the disputed domain name has been in bad faith, by including the CARREFOUR trademark, to intentionally attract Internet users for commercial gain. The composition and use of the disputed domain

name attempts to deceive or lead Internet users to believe that the disputed domain name is operated by the Complainant.

The Panel finds that the disputed domain name was registered and is being used in bad faith due to the following:

The disputed domain name was registered in 2022, around 54 years after the Complainant's well-known trademarks were registered. The disputed domain name was registered without authorization, as the Complainant did not grant the Respondent any authorization to use its trademark in a domain name. The Respondent claims to be working for an affiliate of the Complainant in Spain, but the Respondent has not provided any evidence supporting that argument, and it is unclear the extent of the relationship (if any). The Complainant's trademark has strong reputation that is based on the customer trust in the Complainant's mark. The Panel is of the opinion that at the time the disputed domain name was registered, the Respondent must have been aware of the existence and use of the CARREFOUR trademark by the Complainant.

The disputed domain name resolves to an inactive website. UDRP Panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

The Respondent has demonstrated, by registering the disputed domain name, which reproduces the Complainant's trademark, an intent to capitalize on the goodwill of the Complainant's trademark. Furthermore, the Respondent 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 CARREFOUR trademark.

The above mentioned circumstances, as well as the Respondent's default, in view of the Panel support a finding of registration and use of the disputed domain name in bad faith.

The Panel finds that the Complainant satisfies paragraph 4(a)(iii) 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 name <experienciasclubcarrefour.com> be transferred to the Complainant.

/Martin Michaus-Romero/

Martin Michaus-Romero

Sole Panelist

Date: December 23, 2022