

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. Mkt Digital  
Case No. D2023-0389

### **1. The Parties**

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

The Respondent is Mkt Digital, Brazil.

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

The disputed domain name <lojascarrefour.com> (“Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 30, 2023, 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 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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on March 14, 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 a French company that is well-known in the field of retailing, operating over 12,000 stores in more than 30 countries worldwide. In 2019 the Complainant had a turnover of EUR 80.7 billion, employed more than 321,000 employees and had over 11 million daily visitors in its stores.

The Complainant is the owner of a trade marks in various jurisdictions consisting of the word "CARREFOUR" (the "CARREFOUR Mark") including an International Registration for the CARREFOUR Mark (Registration No. 351147, registered on October 2, 1968) for goods in classes 1-34, designating a variety of jurisdictions.

The Domain Name was registered on June 16, 2022, and does not resolve to an active website.

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

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

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's CARREFOUR Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the CARREFOUR Mark, having registered the CARREFOUR Mark in various jurisdictions. The Domain Name is confusingly similar to the CARREFOUR Mark, wholly incorporating the CARREFOUR Mark and adding the term "lojas", being a Portuguese word meaning "shops".

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the CARREFOUR Mark nor is the Respondent commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Indeed the Domain Name does not resolve to an active webpage at all.

The Respondent has registered and uses the Domain Name in bad faith. There is no plausible circumstance under which the Respondent could legitimately use the Domain Name, which combines the CARREFOUR Mark and the term "lojas", other than in bad faith. Given the reputation of the highly distinctive CARREFOUR Mark, the Respondent must have been aware of the Complainant's mark at the time of registration. In such circumstances, the Respondent's passive holding of the Domain Name amounts to use of the Domain Name in bad faith.

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

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

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

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

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the CARREFOUR Mark, having a registration for the CARREFOUR Mark as a trade mark in various jurisdictions.

The Domain Name incorporates the CARREFOUR Mark in its entirety with the addition of the term, “lojas”. Other UDRP panels have repeatedly held that where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms does 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](#)”).

The Panel finds that the Domain Name is confusingly similar to the Complainant’s CARREFOUR Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

To succeed on this element, a complainant may make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

“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 your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making 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.”

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the CARREFOUR Mark or a mark similar to the CARREFOUR Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial or fair use. In fact, there is no evidence of any demonstrable preparations to use the Domain Name at all.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights or legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registrations to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its 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 its 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.

The Domain Name was registered over 50 years after the CARREFOUR Mark was registered and well after it developed a substantial international registration, including in Brazil, the location of the Respondent. The Panel finds, on the balance of probabilities, that the Respondent would have been aware of the Complainant and its reputation in the CARREFOUR Mark at the time the Respondent registered the Domain Name. There is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name incorporating the distinctive CARREFOUR Mark and the Portuguese word "lojas", meaning "shops" unless there was an intention to create a likelihood of confusion between the Domain Name and the CARREFOUR Mark from which the Respondent would likely benefit.

The Panel is prepared to infer, based on the conduct of the Respondent, including the nature of the Domain Name (containing a distinctive and well-known mark and a descriptive term), the passive holding of the Domain Name and the failure by the Respondent to participate in this proceeding or otherwise provide any explanation of its conduct in registering a domain name that combines the CARREFOUR Mark and the word "lojas", that the Domain Name is most likely being held pending use as website or email address that, without the license of the Complainant, will offer or make reference to the Complainant in an illicit manner for the Respondent's commercial gain. As such, the Panel finds that the passive holding of the Domain Name does not prevent a finding of use in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under 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 Domain Name <lojascarrefour.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: March 20, 2023