

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. farah farah

Case No. D2023-1517

### **1. The Parties**

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

The Respondent is farah farah, Canada.

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

The disputed domain name, <carefourbk.com> (the “Domain Name”), is registered with Launchpad.com Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 6, 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 April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Center received an informal email from the Respondent on April 13, 2023 reading: “Hello, I would like to make amendments and be given more time to review it. Thanks. Farah Farah.” The Respondent did not submit any formal response. Accordingly, on May 10, 2023, the Center notified the Parties that no Response having been filed the Center would proceed to Panel Appointment.

The Center appointed Tony Willoughby as the sole panelist in this matter on May 16, 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 well-established international retailer based in France with retail outlets in many countries. It has traded under its “Carrefour” name for well over 50 years and has a large number of trademark registrations protecting that name including, by way of example, International Trademark Registration No. 351147 CARREFOUR (word) registered on October 2, 1968, for a wide variety of goods in classes 1 to 34.

The Complainant runs a bank under the name, “Banque Carrefour”, a name which is also protected by trademark registrations, one of which is French Trademark Registration No. 3585968 BANQUE CARREFOUR (words) registered on July 2, 2008, for various financial services in class 36

The Complainant operates websites connected to its domain names <carrefour.com> (registered on October 25, 1995) and <carrefour-banque.fr> registered on October 7, 2009.

The Domain Name was registered on March 13, 2023, but is not connected to an active website. According to the WhoIs report exhibited to the Complaint, the Respondent is the owner of 836 domain names.

#### **5. Parties’ Contentions**

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

The Complainant contends that the Domain Name is confusingly similar to its CARREFOUR and BANQUE CARREFOUR registered trademarks; that the Respondent has no rights or legitimate interests in respect of the Domain Name; and that the Domain Name has been registered and is being used in bad faith.

The essence of the Complainant’s case is that the Respondent registered the Domain Name with knowledge of the Complainant’s above-mentioned trademarks, intending it to be a close misspelling of those trademarks. The Complainant contends that the letters “bk” in the Domain Name is intended to be an abbreviation of “bank” leading to confusion with the Complainant’s bank. The Complainant’s contentions in this regard are dealt with in greater detail below.

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

The Respondent sent an email communication to the Center on April 13, 2023 (see section 3 above), but the Respondent has not responded to the Complainant’s contentions.

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

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trademark 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.

## **B. Identical or Confusingly Similar**

The Domain Name comprises the dictionary words “care” and “four” followed by the letters “bk” and the “.com” generic Top-Level Domain identifier.

Section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) explains the test for identity or confusing similarity under the first element of the Policy and includes the following passages:

“While each case is judged on its own merits, in 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 to that mark for purposes of UDRP standing.”

The words “care” and “four” when used in combination have no meaning. However, the combination both phonetically and visually strongly resembles the Complainant’s CARREFOUR trademark. The addition of the letters “bk” may, as the Complainant contends, be seen as an abbreviation for “bank”, but whether or not that is the case, the Complainant’s CARREFOUR trademark is readily recognisable in the Domain name.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

For completeness, the Panel acknowledges that the Complainant relies also on the confusing similarity between the Domain Name and the Complainant’s BANQUE CARREFOUR trademark. In the view of the Panel the Domain Name is indeed confusingly similar to both cited trademarks of the Complainant, but in each case stemming from the power of the CARREFOUR trademark. The BANQUE CARREFOUR trademark supports the Complainant’s contention that the “bk” in the Domain Name is probably an abbreviation for “bank”.

## **C. Rights or Legitimate Interests**

Section 2.1 of [WIPO Overview 3.0](#) provides as follows:

“The UDRP Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. Accordingly, a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defences under UDRP paragraph 4(c) include the following:

- (i) before any notice 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) has been commonly known by the domain name, even if the respondent has acquired no trademark 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 trademark or service mark at issue."

The Complainant recites some of the circumstances set out in paragraph 4(c) of the Policy, any of which if found by the Panel to be present shall demonstrate rights or legitimate interests for the purposes of this element of the Policy, and contends that none of them is applicable.

The Complainant has produced evidence of its search against the Respondent's name at the Global Brand database. The result shows that insofar as that database is concerned there is no record of the Respondent owning any trademark right giving rise to rights in the Domain Name. The Complainant states that it has been unable to find any evidence of the Respondent being commonly known by the Domain Name and points out that this Complaint was filed very shortly after the Domain Name was registered thereby limiting the scope for the Respondent to have become commonly known by the Domain Name.

The Complainant asserts that it has no connection with the Respondent and has given the Respondent no permission to use the Domain Name or any variant of its CARREFOUR trademark.

The Complainant points to the fact that there is no evidence that the Domain Name has been used and there is no evidence that the Respondent has made any preparations to use the Domain Name in relation to a *bona fide* offering of goods or services. The Domain Name simply resolves to an error page.

The Panel finds that the Complainant has made out a *prima facie* case under this element of the Policy; in other words a case calling for an answer from the Respondent. The Respondent has not provided an answer.

In the absence of an answer from the Respondent the Panel finds that the Respondent has no such rights or legitimate interests.

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

The Complainant contends that the Domain Name has been registered and is being used in bad faith for the following reasons:

1. The fame of the Complainant's trademark is such that it is inconceivable that the Respondent could have been unaware of it. The Complainant asserts that in selecting the Domain Name the Respondent must have been influenced by the fame of the Complainant's trademark and in any event should have been aware that in selecting the Domain Name it was violating the Complainant's trademark rights.
2. It is highly likely that the Domain Name was chosen because of its close similarity to the Complainant's trademark. The Complainant asserts that the Respondent acquired and is using the Domain Name to attract Internet users by creating a likelihood of confusion with the Complainant's trademark.

3. The Complainant's trademark registrations significantly predate registration of the Domain Name.
4. The current use of the Domain Name cannot be considered a good faith use of the Domain Name. By maintaining it the Respondent is depriving the Complainant of the ability to reflect its trademark in the corresponding domain name. Moreover, "the content of the website associated with the disputed domain name being marked as malicious, the Complainant has strong reasons to believe that the disputed domain name is used for phishing purposes."

The Panel accepts the Complainant's unchallenged allegation that the Respondent selected the Domain Name with knowledge of the Complainant and its CARREFOUR trademark and with intent to profit in some way on the back of the fame of the Complainant's trademark.

However, there is no evidence that the Respondent is making any use of the Domain Name. It is not connected to an active website. Conceivably it is being used for emails and if so, in all likelihood, as the Complainant contends it will be being used for the purpose of phishing. But there is no evidence to that effect. The quote from the Complaint in 4 above ("the content of the website associated with the disputed domain name being marked as malicious, the Complainant has strong reasons to believe that the disputed domain name is used for phishing purposes") would be powerful support for that contention, but the Panel has been unable to find anywhere in the evidence an indication that the "the content of the website associated with the disputed domain name" is "marked as malicious". The Domain Name is not connected to a website and the screenshot of the page put in evidence by the Complainant is, as the Complainant states in the Complaint, simply an error page.

That the Respondent has been receiving the papers in this case is evident from the email sent to the Center by the Respondent on April 13, 2023 (see section 3 above). From this the Panel concludes that the Respondent, aware of the serious allegations made by the Complainant, has nonetheless made a positive election not to respond to the Complaint. To what extent may the Panel draw inferences from the Respondent's failure to respond? The answer is to be found in section 4.7 of [WIPO Overview 3.0](#), which answers the question: "Does a respondent's default/failure to respond to the complainant's contentions automatically result in the complaint succeeding?"

"Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case.

Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent.

Panels have typically treated a respondent's submission of a so-called 'informal response' (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case 'has no merit' and demanding that it be dismissed) in a similar manner as a respondent default."

The Panel has already found on the basis of the evidence in the case that the Domain Name is confusingly similar to the Complainant's CARREFOUR trade mark. The Panel has also found, on the basis of a *prima facie*

case established by the Complainant and in the absence of any substantive Response from the Respondent, that the Respondent has no rights or legitimate interests in respect of the Domain Name.

The Respondent appears to be the proprietor of 836 domain names (section 4 above). From this, the Panel concludes that the Respondent is an experienced dealer in Domain Names and that the Respondent registered the Domain Name for commercial gain. The Panel further infers that the Respondent registered the Domain Name, a misspelling of the Complainant's very well-known trademark, hoping and anticipating that the resultant confusion would lead to commercial gain derived from Internet users not noticing the misspelling.

Commonly, the commercial gain derived from this form of typosquatting is from the connection of the domain names to trading websites or pay-per-click parking pages featuring advertising links. Here, however, the Domain Name is not linked to an active page. Is this because, as the Complainant points out, the Complaint was launched before the Respondent was able to build the desired website or is it for another reason? Another reason could be that the Domain Name, featuring "bk" as an abbreviation for "bank", is intended to be mistaken for Bank (Banque) Carrefour and will only be used for emails as part of a phishing enterprise?

The Panel has insufficient evidence to come to a firm conclusion on this save that the Domain Name was registered for commercial gain on the back of deception of Internet users, whether through a website not yet activated or through emails. The Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy. If it is the case that the Domain Name is not in fact in active use, it nonetheless represents an unjustifiable threat hanging over the head of the Complainant and as such, in the view of the Panel, a continuing use 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, <carefourbk.com>, be transferred to the Complainant.

*/Tony Willoughby/*

**Tony Willoughby**

Sole Panelist

Date: May 30, 2023