

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Sahad Mohammed Riviera

Case No. D2023-3265

1. The Parties

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

The Respondent is Sahad Mohammed Riviera, Spain.

2. The Domain Name and Registrar

The disputed domain name <miseajour-carrefourbanque.com> is registered with OwnRegistrar, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 28, 2023. On July 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (WoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 2023 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 31, 2023.

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 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on September 12, 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 worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968.

The Complainant operates more than 12.000 stores in more than 30 countries worldwide. With more than 321.000 employees worldwide, 11 million of daily checkout in its stores and 1.3 million daily unique visitors in its online stores.

The Complainant additionally offers travel, banking, insurance and ticketing services.

The Complainant is the owner of the following registered trademarks:

- 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;
- French trademark CARREFOUR No. 3585968, registered on July 2, 2008, duly renewed and designating services in international class 36.

The disputed domain name was registered on July 9, 2023 and it resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is similar to the trademarks CARREFOUR.

The disputed domain name contains the trademark CARREFOUR in its entirety, associated to the term "banque" and the expression "mise a jour", the latter being a French expression translated in English to "update".

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name.

There is no evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization.

The Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services.

The Complainant and its trademarks were so widely well-known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights on the trademark CARREFOUR.

The Complainant thus states that the Respondent acquired the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks.

The disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

The Panel holds that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Respondent's incorporation of the Complainant's trademark CARREFOUR in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's marks.

Mere addition of the term "banque" and the expression "mise a jour", both in French language, and a hyphen does not prevent a finding of confusing similarity. The addition of other terms (whether descriptive, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element. The nature of such term(s) may however bear on assessment of the second and third elements. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

This Panel finds, similarly to other UDRP panels, that the addition of the generic Top-Level Domain ".com" to the disputed domain name does not prevent a finding of confusing similarity for purposes of the Policy (see *Carlsberg A/S v. Xu Guo Xing*, WIPO Case No. [D2017-0301](#); *Philip Morris USA Inc. v. Shimei Wang*, WIPO Case No. [D2016-2517](#); *Livelle v. Martijn Noordermer*, WIPO Case No. [D2016-2524](#)).

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent will lead to this ground being set forth.

Refraining from submitting a Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name.

The Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Furthermore, the composition of the disputed domain name, comprising the Complainant's well-known trademark plus a hyphen and additional expressions in French language, and use of the disputed domain name falsely suggest an affiliation with the Complainant and do not support any fair use in the circumstances of this case (see [WIPO Overview 3.0](#), section 2.5).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;
- (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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the widespread commercial recognition of the trademark CARREFOUR is such that the Respondent, must have had knowledge of the trademark before registering the disputed domain name.

The Respondent appears to have chosen the disputed domain name in order to deliberately attract Internet users to its website in the mistaken belief that it was the website of the Complainant, or otherwise linked to or authorized by the Complainant.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

Furthermore, the Panel finds that the passive holding of the disputed domain name in the circumstances of the case does not prevent a finding of bad faith registration and use. On the contrary, this Panel agrees with the Complainant's assertion that in the case of domain names containing well-known earlier marks, passive holding can constitute an indication of bad faith. Here, noting as well the failure of the Respondent to submit a response, the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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, <miseajour-carrefourbanque.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: September 26, 2023