ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Carrefour SA v. Losey
Case No. D2023-4234

1. The Parties

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

The Respondent is Losey, Bulgaria.

2. The Domain Name and Registrar

The disputed domain name <careefour.site> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 11, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 (Unknown Sofia Bulgaria) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 October 19, 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 October 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 8, 2023.

The Center appointed Alissia Shchichka as the sole panelist in this matter on December 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, headquartered in France and listed on the Paris Stock Exchange (CAC 40) index, operates retail stores worldwide. With a global presence in over 30 countries, including the Middle East region, the Complainant employs over 384,000 people globally and generates revenues of approximately EUR 80 billion.

The Complainant owns several trademarks containing the term CARREFOUR, amongst others:

- International trademark registration No. 351147, registered on October 02, 1968, for the word mark CARREFOUR in classes 1 to 34;

- International trademark registration No. 353849, registered on February 28, 1969, for the word mark CARREFOUR in classes 35 to 42;

- A Bulgaria trademark registration No. 00064741, registered on April 23, 2008, for the word CARREFOUR in classes 29, 30, 32, 33 and 35.

The Complainant is also the owner of numerous domain names identical to, or comprising, CARREFOUR Trademarks, including <carrefour.eu> registered since 2006, and <carrefouriraq.com> registered since 2018.

The above trademarks and domain names were registered prior to the registration of the disputed domain name, which was registered on July 21, 2023.

The Respondent, according to the disclosed WhoIs information for the disputed domain name, is a resident of Bulgaria.

The disputed domain name currently displays an inactive webpage. According to the evidence provided by the Complainant, the Respondent has used the disputed domain name to resolve to an ecommerce website displaying the Complainant's trademarks.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant's contentions can be summarized as follows:

First, the Complainant contends that its CARREFOUR trademark is well-known.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark CARREFOUR as it incorporates the entire trademark. The Complainant believes that by using a side-by-side comparison, the trademark CARREFOUR is recognizable within the disputed domain name.

The Complainant asserts that the Respondent deliberately substituted the double letters "rr" with the double letters "ee." Nevertheless, this alteration does not alter the overall impression that the disputed domain

name is associated with the Complainant's trademarks or prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademarks. The generic suffix ".site" is not sufficient to prevent confusing similarity.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. The Complainant supports that the Respondent chose the disputed domain name to attract visitors to his ecommerce website.

Third, the Complainant additionally argues that the trademark CARREFOUR is widely known, and the Respondent was aware of the Complainant's trademark, indicating bad faith registration. Moreover, the Complainant submits that the disputed domain name resolved to an ecommerce website entitled "Carrefour Kuwait" that reproduced the business identifiers the Complainant uses for the Middle East region.

Finally, the Complainant asserts that the Respondent, deliberately concealed its true identity during the registration of the disputed domain name.

Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

(i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview 3.0, section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.7

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. WIPO Overview 3.0, section 2.1.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the CARREFOUR trademarks or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the CARREFOUR trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. WIPO Overview 3.0, section 2.3;

Based on the available record, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. WIPO Overview 3.0, section 2.4;

Instead, the Respondent was using the disputed domain name to host an ecommerce website featuring the Complainant's CARREFOUR trademark and logo, and referencing products offered by the Complainant. The composition of the disputed domain name is such that it carries a risk of implied affiliation with the Complainant and/or endorsement by the trademark owner, which cannot be considered as fair use. WIPO Overview 3.0, section 2.5.1.

Moreover, Panels have held that the use of a domain name for illegal activity, namely for impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. WIPO Overview 3.0, section 2.13.1.

Finally, the fact that the disputed domain name currently resolves to an inactive page does not alter the aforementioned conclusion, especially in consideration of the commercial nature of the website to which the confusingly similar disputed domain name has been redirected.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant's well-known CARREFOUR trademarks substantially predates the Respondent's registration of the disputed domain name. Therefore, the Respondent knew or should have known of the Complainant's trademarks at the time of registering the disputed domain name. WIPO Overview 3.0, section 3.2.2.

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant's widely known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith. WIPO Overview 3.0, section 3.1.4.

Moreover, the Respondent's knowledge of the Complainant and its trademarks can be readily inferred from the use of the disputed domain name. The misspelling used to create the disputed domain name, coupled with its prior use for a website featuring the Complainant's CARREFOUR trademark and logo and selling CARREFOUR products, clearly indicates that the Respondent was aware of the nature of the business associated with the Complainant's CARREFOUR trademarks. Panels have consistently ruled that under paragraph 4(b)(iv) of the Policy, this circumstance shall be considered as evidence of the registration and use of a domain name in bad faith.

Therefore, in the Panel's view, 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 CARREFOUR trademark 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. WIPO Overview 3.0, section 3.1.4.

Based on the available record, the Panel finds that the Complainant has established the third 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 name <careefour.site> be transferred to the Complainant.

/Alissia Shchichka
Alissia Shchichka
Sole Panelist
Date: December 26, 2023