

PANEL DECISION

Carrefour v. Domain Privacy OÜ, Domain Privacy Case No. DEU2023-0046

1. The Parties

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

The Respondent is Domain Privacy OÜ, Domain Privacy, Estonia.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <hypercarrefour.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Domain Robot.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 30, 2023. On December 1, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On December 4, 2023, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 6, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the "ADR Rules") and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the "Supplemental Rules").

In accordance with the ADR Rules, Paragraph B(2), the Center formally sent notification to the Respondent of the Complaint, and the proceedings commenced on December 13, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent's default on January 3, 2024.

The Center appointed Petra Pecar as the sole panelist in this matter on January 5, 2024. 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant, Carrefour, founded in 1959, is a French retail company which operates thousands of stores in over 30 countries, with more than 384,000 employees globally and 1.3 million daily unique visitors to its webstores and annual turnover of around EUR 80 billion.

The Complainant is the owner of numerous trademark registrations in various jurisdictions worldwide, among others European Union word mark registration No. 005178371 for CARREFOUR, registered on August 30, 2007, for goods and services in Classes 9, 35 and 38.

The Complainant is also the owner of numerous domain name registrations reflecting its marks, within generic and country-code Top-Level Domains, such as <carrefour.fr>, <carrefour.it>, <carrefour.es>, <carrefour.be>, <carrefour.eu>, <carrefour.net> and <carrefour.com>.

The disputed domain name <hypercarrefour.eu> was registered on April 21, 2023, and at the time of the Complaint, it resolved to a pay-per-click page with sponsored links that include the term “Carrefour”.

5. Parties’ Contentions

A. Complainant

The Complainant argues that is a major and well-known leader in the retail sector worldwide and listed on the Euronext Paris Stock Exchange (CAC 40) and a Premium Partner of the Paris 2024 Olympic Games. The Complainant contends that their fame and notoriety are well documented through their substantial social media following, as illustrated by the millions of users who “like” or “follow” their pages, which is supported by data showing significant follower counts on various platforms, such as 12 million on Facebook in both France and Spain, 1.2 million on LinkedIn in France, 696,000 on Instagram in France, and 993,000 on Instagram in Spain. Furthermore, the Complainant’s business identifiers, including trademarks, have a widely recognized and ongoing reputation.

The Complainant contends that the domain name <hypercarrefour.eu> is confusingly similar to its well-established mark CARREFOUR. The argument hinges on the incorporation of the entire trademark in the disputed domain name, alongside the addition of the prefix “hyper”. Rather than differentiating, this prefix reinforces the link to the Complainant’s CARREFOUR mark, especially considering their significant presence in the hypermarket sector. The presence of the “.eu” Top-Level Domain in <hypercarrefour.eu> is regarded as a standard element of domain naming, which does not influence the evaluation of the disputed domain name similarity to the mark within the meaning of the first element. The focus is on the direct association created by the combination of the mark and the additional prefix in the disputed domain name.

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name, which is based on the fact that the disputed domain name leads to a parking page and not an active website, use not considered legitimate in similar cases. Furthermore, the disputed domain name includes the Complainant’s well-known CARREFOUR marks without authorization, indicating the Respondent’s lack of legitimate interests.

The Complainant also points out the implausibility of any legitimate use of the disputed domain name by the Respondent, given the fame of their marks. The Complainant asserts that the Respondent's use of the disputed domain name seems to be an attempt to mislead consumers or harm the Complainant's reputation and CARREFOUR mark, rather than a legitimate, non-commercial, or fair use.

The Complainant argues that the disputed domain name was registered and is being used in bad faith, which is based on the fact that the disputed domain name incorporating the Complainant's CARREFOUR mark is potentially misleading web users. The Respondent's awareness of CARREFOUR mark at the time of registration, coupled with the use of a privacy service to hide their identity, further suggests bad faith. The disputed domain name use for a pay-per-click webpage indicates an intent to profit from the CARREFOUR mark's recognition. Additionally, the Respondent's lack of response in the procedure supports the claim of bad faith.

B. Respondent

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

6.1. Language of the Proceeding

In accordance with Paragraph A(3)(a) of the ADR Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the ADR Proceeding shall be the language of the Registration Agreement for the disputed domain name. In the absence of an agreement between the Parties, the Panel may in its sole discretion, having regard to the circumstances of the ADR Proceeding, decide on the written request of a complainant that the language of the ADR Proceeding will be different than the language of the Registration Agreement for the disputed domain name.

The Panel notes that the language of the Registration Agreement for the disputed domain name is Estonian in the present case. However, pursuant to the panel's decision of November 4, 2023, in *CARREFOUR v. Domain Privacy y, Domain Privacy OÜ*, WIPO Case No. DEUL2023-0005, while the language of the registration agreement is Estonian, the Complainant's request for the language of the present ADR proceedings to be in English was granted by the panel and accordingly the language of the ADR proceeding shall be English.

6.2. Discussion and Findings

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

"The Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the ADR Rules", as indicated in paragraph B(11)(a) of the ADR Rules.

Under paragraph B(11)(d) of the ADR Rules, the Complainant is required to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; or
- (iii) the disputed domain name has been registered or is being used by the Respondent in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

Paragraph 11(B)(d)(1)(i) of the ADR Rules requires a complainant to show that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the

national law of a Member State and/or European Union law. A trademark registration provides a clear indication that the Complainant's rights.

In the present case, the Panel finds that the Complainant has established its rights in the CARREFOUR mark based on the European Union registration, mentioned under the Section 4 above, which preceded the disputed domain name registration for almost 16 years.

The Panel further finds that the disputed domain name incorporates the CARREFOUR mark with additional descriptive prefix "hyper". The prefix "hyper" as used by the Complainant, signifies a store that is larger and offers a wider range of products than a typical market. As numerous UDRP panels have established, the addition of the other terms (whether descriptive or otherwise) does not prevent a finding of confusing similarity (see Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)")¹). Furthermore, the additional ccTLD ".eu" should not have any influence on the finding of confusing similarity in accordance with well-established practice.

In accordance with the above, the Panel finds that the Complainant has satisfied the requirements of Paragraph 11(B)(d)(1)(i) of the ADR Rules in establishing its trademark rights and showing that the disputed domain name is confusingly similar to its CARREFOUR mark.

B. Rights or Legitimate Interests

Under the second element of the ADR Rules, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence to rebut that presumption. If the respondent fails to do so, a complainant is generally deemed to have satisfied the second element, as set out in Paragraph B(11)(d)(1)(ii) of the ADR Rules (see also [WIPO Overview 3.0](#), section 2.1).

The Respondent failed to provide any evidence of authorization to use the CARREFOUR marks or to register a domain name containing CARREFOUR mark.

According to the Complainant, the Respondent is not associated or connected with the Complainant in any way, and the Complainant has not granted the Respondent any license or authorization to use or register any domain name that includes the Complainant's CARREFOUR mark. The Respondent has further failed to provide a response to the Complaint, thereby failing to present any information or factors that could potentially justify prior rights or legitimate interests in the disputed domain name. Additionally, there appears to be no evidence of the Respondent engaging in any legitimate or genuine use of the disputed domain name, whether for noncommercial or *bona fide* activities.

The Panel finds that the nature of the disputed domain name, which consists of the Complainant's CARREFOUR mark, suggests an affiliation with the Complainant and for that reason a fair use cannot be constituted (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Based on the above, the Panel finds that the second element of Paragraph 11(B)(d)(1)(ii) of the Policy has been met by the Complainant.

C. Registered or Used in Bad Faith

The third element of Paragraph 11(B)(a)(1) of the ADR Rules requires a complainant to demonstrate that the respondent registered or is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1,

¹ Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules for UDRP, the Panel finds UDRP precedent and [WIPO Overview 3.0](#) to be relevant to this case. See *Natixis v. BARBAOUAT ROBERT*, WIPO Case No. [DEU2023-0002](#).

states that “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

Paragraph 11(B)(f) of the ADR Rules stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the domain name was registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognized or established by national and/or European Union law, or to a public body; or
- (ii) The domain name has been registered in order to prevent the holder of a name in respect of which a right is recognized or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
- (iv) the domain name was intentionally used to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a name in respect of which a right is recognized or established by national and/or European Union law 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.

The Panel states that it seems more likely than not that at the time of the disputed domain name’s registration, the Respondent was aware of the Complainant and its CARREFOUR mark, and intentionally targeted this mark when registering the disputed domain name with the additional prefix “hyper”, which is descriptive in respect to the Complainant and its business field. The Respondent had the opportunity to check if the disputed domain name is violating any third-party rights before registering it, and if the Respondent had done so, he would have noticed that all results of an Internet or trademark search are related to the Complainant and its CARREFOUR mark, which the Panel on the basis of the Complainant’s evidence of social media evidence, worldwide presence and previous UDRP cases considers as a well-known mark.

Concerning use in bad faith, the Panel notes that the disputed domain name used to lead to a parking page containing sponsored pay-per-click links. The Panel also notes that the sponsored links include the terms “Carrefour”. Such use certainly cannot be observed as use in good faith as the Respondent was capitalizing on the reputation of the Complainant’s mark in order to generate undue profit from each link appearing on the parking page.

For these reasons, this Panel finds that the disputed domain name is registered and is being used in bad faith in accordance with Paragraph (B)(11)(d)(iii) of the ADR Rules.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name, <hypercarrefour.eu>, be transferred to the Complainant².

/Petra Pecar/

Petra Pecar

Sole Panelist

Date: January 19, 2024

² (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) The Complainant is an undertaking established in France and thus satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.