

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Raynor Mercedes

Case No. D2022-4338

1. The Parties

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

The Respondent is Raynor Mercedes, United States of America.

2. The Domain Names and Registrar

The disputed domain names <carrefourbanque.monster>, <carrefourbp.monster>, <carrefourmarket.monster>, and <carrefourshop.monster> are registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 2022, 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 November 23, 2022.

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 November 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2022.

The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 21, 2022.

The Center appointed José Pio Tamassia Santos as the sole panelist in this matter on January 9, 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

4.1. The Complainant is Carrefour, a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. With a turnaround of EUR 76 billion in 2018, the Complainant is listed on the index of the Paris Stock Exchange (CAC 40). The Complainant operates more than 12,000 stores in more than 30 countries worldwide. With more than 384,000 employees worldwide and 1.3 million daily unique visitors in its stores, the Complainant is without any doubt a major and well-known worldwide leader in retail. The Complainant additionally offers travel, banking, insurance and ticketing services.

4.2. The Complainant owns several hundred trademark rights worldwide in the “carrefour” term as well as other trademarks comprising the term “carrefour”. In particular, the Complainant is the owner of the following trademarks registered well before the registration of the disputed domain names:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 1 to 34;

- International trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42; and

- United States trademark CARREFOUR No. 6763415, registered on June 21, 2022, designating services in international class 35.

4.3. In addition, the Complainant is also the owner of numerous domain names identical to, or comprising, its trademarks, both within generic and country code Top-Level Domains. For instance, “carrefour.com” has been registered since 1995.

4.4. The disputed domain names <carrefourbanque.monster>, <carrefourbp.monster>, <carrefourmarket.monster>, and <carrefourshop.monster> were registered by the Respondent on August 12, 2022. Apart from the disputed domain name <carrefourbp.monster>, the remaining disputed domain names redirect to a website offering streaming content in apparent copyright violation. The remaining disputed domain name <carrefourbp.monster> does not resolve to an active website.

5. Parties' Contentions

A. Complainant

5.1. The Complainant states that the disputed domain names comprise the Complainant's CARREFOUR trademark entirely, along with the terms “banque”, “bp”, “market”, and “shop”, which do not prevent confusing similarity between the disputed domain names and the Complainant's trademark.

5.2. The Complainant submits that the Respondent lacks a right or legitimate interest in the disputed domain names.

5.3. The Complainant states that the unauthorized registration of the disputed domain names by the Respondent and its passive holding, likely in the aim of a fraudulent use, are for the purpose of commercial gain and constitute bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

6.1. Paragraph 4(a) of the Policy provides specific remedies to trade mark owners against registrants of domain names where the owner of the mark (*i.e.*, the complainant) proves each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 was registered and is being used in bad faith.

6.2. The Complainant has the burden of proof, by a preponderance of the evidence, in respect to each element in paragraph 4(a) of the Policy.

6.3. The Respondent, having failed to respond in the present proceeding, is in default, and in accordance with paragraph 14(b) of the Rules, "the panel shall draw such inferences [...] as it considers appropriate".

A. Identical or Confusingly Similar

6.4. Regarding the first element of the UDRP, the consensus view among Panels is that, where a Complainant holds a registered trademark in any country, this *prima facie* satisfies the threshold of having trademark rights for the purpose of standing to file a UDRP case.

6.5. With regards to the above, as established in the Factual Background, the Complainant holds numerous trademark registrations for CARREFOUR registered in various jurisdictions. The Complainant also highlights the goodwill and recognition that has been attained under the CARREFOUR trademark, which is a distinctive identifier associated with the Complainant's business.

6.6. The Complainant submits that its earlier trademarks enjoy a wide-spread continuous reputation, as stated by a large number of decisions see *Carrefour SA v. hanib bas*, WIPO Case No. [D2020-1798](#); *Carrefour SA. v. Reliant-web Domain Admin / Jean Marie Grolleau / Joanne Elvert*, WIPO Case No. [D2021-2389](#); *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#).

6.7. The Complainant's fame and notoriety is also evidenced on the Internet. Indeed, the Complainant's Facebook page is currently "liked" by more than 11 million Internet users.

6.8. The Complainant submits that the disputed domain names are confusingly similar to its earlier well-known CARREFOUR trademarks. In fact, the disputed domain names incorporate the earlier trademarks of the Complainant together with the terms "banque" ("bank" in French), "bp", "market", and "shop".

6.9. It is established case law that the addition of terms - such as "banque", "bp", "market" and "shop" - to a trademark in a domain name does nothing to prevent confusing similarity arising from that domain name. See *Carrefour SA v. Registration Private, Domains By Proxy, LLC / 3232 33232*, WIPO Case No. [D2022-1490](#); and see also *Carrefour SA v. Karel de Blijker*, WIPO Case No. [D2021-3683](#), "The CARREFOUR trademark is the dominant, recognizable portion of each disputed domain name and addition of various terms does not prevent a finding of confusing similarity. The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied."

6.10. The disputed domain names reproduce the Complainant's trademarks. Therefore, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's earlier trademarks.

6.11. The first element of the Policy, therefore, has been met.

B. Rights or Legitimate Interests

6.12. The Complainant contends that the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names.

6.13. The Complainant performed searches and found no CARREFOUR trademark owned by the Respondent. From this finding, the Complainant asserts that the Respondent has acquired no trademark in the term "carrefour" which could have granted the Respondent with rights in the disputed domain names. The Complainant has found no evidence whatsoever that the Respondent is known by the disputed domain names. There is no evidence that the Respondent has been commonly known by the disputed domain names as an individual, business, or other organization. This statement is reinforced by the fact that the Complainant has filed the present Complaint soon after the registration of the disputed domain names, intending to not allow the Respondent to be commonly known by the disputed domain names.

6.14. The Complainant states that the Respondent reproduces the Complainant's earlier registered trademarks in the disputed domain names without any license or authorization from the Complainant, which is a strong evidence of the lack of rights or legitimate interest. The Complainant submits that it has not authorized the use of its earlier trademarks or terms similar thereto in the disputed domain names in any manner or form.

6.15. The Complainant also asserts that apart from <carrefourbp.monster>, which does not resolve to any active website (a blank or error page cannot be considered a *bona fide* offering of goods or services under the Policy. See, *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#)) the other disputed domain names resolve to a website ("https://stream.nerzo.online/") used for the illegal streaming of movies, tv series and anime, in violation of copyrights. Such illicit use can never confer rights or legitimate interests upon a respondent.

6.16. The disputed domain names are inherently likely to mislead Internet users, and there is no evidence that the Respondent has been making a legitimate noncommercial or fair use of the disputed domain names. In addition, in light of the worldwide renown of the Complainant's trademark, the Complainant sees no plausible use of the domains that would be legitimate fair and noncommercial.

6.17. In this scenario, none of the circumstances which set out how a Respondent can prove rights or legitimate interests in the disputed domain names, are present in this case. Considering all the elements mentioned above, the Respondent should be considered as having no rights or legitimate interests in respect of the domain names that are the subject of the Complaint.

6.18. Finally, the Respondent is not making any legitimate noncommercial or fair use of the disputed domain names. Accordingly, the second element of the Policy has been established.

C. Registered and Used in Bad Faith

6.19. Paragraph 4(b) of the Policy provides that "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 a 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 registration to the complainant who is the owner of the trademark 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) that 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) that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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.

6.20. The Complainant submits that the Complainant and its trademarks were so widely well known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights. Indeed, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by panels for years.

6.21. The Complainant states that the Respondent necessarily had the Complainant's name and trademark in mind when registering the disputed domain names. The Respondent's choice of domain names cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith, see *Carrefour SA v. blackwhite, dolly Tiwari*, WIPO Case No. [D2021-0274](#).

6.22. The Complainant contends that it is highly likely that the Respondent chose the domain names because of their identity with or similarity to a trademark in which the Complainant has rights and legitimate interest. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's domains. Such use cannot be considered a good faith use, see *Express Scripts, Inc. v. Windgather Investments Ltd/ Mr. Cartwright*, WIPO Case No. [D2007-0267](#).

6.23. Finally, the current use of the majority of the disputed domain names, in connection with a website offering copyrighted content for streaming cannot be regarded as a good faith use under the Policy. While one disputed domain name has been inactive, such passive holding of a domain name does not necessary prevent a finding of bad faith when weighting the totality of the circumstances. Here, noting the Respondent's pattern of bad faith registrations targeting the Complainant, as well as the use to which the remaining disputed domain names were put, the passive holding of the disputed domain name <carrefourbp.monster> does not prevent a finding of bad faith.

6.24. Considering all the elements above, the Complainant contends that the domain names were registered and are being used in bad faith by the Respondent. The combination of all the elements listed and detailed above unequivocally show that the Respondent has acted in bad faith when registering, in line with the Policy.

6.25. The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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 names <carrefourbanque.monster>, <carrefourbp.monster>, <carrefourmarket.monster>, and <carrefourshop.monster> be transferred to the Complainant.

/José Pio Tamassia Santos/

José Pio Tamassia Santos

Sole Panelist

January 23, 2023