

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. hmida Imohada

Case No. D2023-0388

1. The Parties

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

The Respondent is hmida Imohada, Morocco.

2. The Domain Name and Registrar

The disputed domain name <carrefourcartecadeaufr.info> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 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 January 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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2023.

The Center appointed Ian Blackshaw as the sole panelist in this matter on March 17, 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.

With a turnover of EUR 80,7 billion in 2019, 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 321,000 employees worldwide, 11 million daily checkouts in its stores and 1.3 million daily unique visitors to its online stores, the Complainant is a major and well-known worldwide leader in retail.

In France alone, the Complainant has 248 hypermarkets, 1,071 markets and 3,959 proximity stores. The Complainant is also present in Morocco. More than 10 Carrefour stores are present in Morocco and the Complainant's activity in this country has a dedicated website at "www.carrefourmaroc.ma/nos-magasins"

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

The Complainant owns several hundred trademark rights worldwide in the CARREFOUR name, evidence of which has been provided to the Panel.

In particular, the Complainant is the owner of the following trademarks registered well before the registration of the disputed domain name on June 17, 2022:

International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 01 to 34; and

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

Again, evidence of these registrations has been provided to the Panel.

The Complainant submits that the trademarks CARREFOUR enjoy a wide-spread continuous reputation, as stated by a large number of UDRP decisions: "CARREFOUR is a well-known trademark in France and elsewhere" *Carrefour v. Contact Privacy Inc. Customer 0155401638/Binya Rteam*, WIPO Case No. [D2019-2895](#). "The mere registration of a domain name that is confusingly similar to a famous trademark (...). The Trademarks are well-known trademarks" *Carrefour v. Perfect Privacy, LLC/Milen Radumilo*, WIPO Case No. [D2019-2610](#).

The Complainant's fame and notoriety is also evidenced on the Internet. Indeed, the Complainant's Facebook page is currently "liked" by more than 11.9 million Internet users. Evidence of this has been provided to the Panel.

The Complainant is also the owner of numerous domain names identical to its CARREFOUR trademarks, both within generic and country-code top-level domains. For instance, <carrefour.com> has been registered since 1995. Again, evidence has been provided to the Panel.

The disputed domain name was registered on June 17, 2022 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant submits that the disputed domain name is highly similar to the earlier well-known trademarks CARREFOUR. Indeed, the disputed domain name includes the earlier trademark CARREFOUR in its entirety.

The presence of the words “carte cadeau” and the country code “fr” in the disputed domain name does not allow the latter to escape the risk of confusion with the CARREFOUR trademark. On the contrary, it only aggravates the risk of confusion with the CARREFOUR trademark. Indeed, “carte cadeau” is a French expression translated into English as “gift card” - which directly refers to the retail business, which is the main activity of the Complainant and “fr” designates the main country of operation of the Complainant.

It should also be noted that the Complainant operates a dedicated website for its gift cards, available at “www.cartecadeau.carrefour.fr”.

Moreover, in many previous UDRP decisions, panels considered that the incorporation of a well-known trademark in its entirety may be sufficient to establish that the disputed domain name is identical or confusingly similar to the Complainant’s trademark. See, for example, *Carrefour v. Contact Privacy Inc. Customer 0152812191 / Milen Radumilo*, Milen Radumilo, WIPO Case No. [D2019-0670](#).

As a consequence, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s earlier trademarks. The first condition under the Policy should be deemed satisfied.

The Respondent has no rights or legitimate interests in respect of the domain name.

Firstly, the Complainant contends that the Respondent does not own any CARREFOUR or “carrefour carte cadeau” trademarks. From this finding, the Complainant asserts that the Respondent has not acquired any trademark in the name CARREFOUR which could have granted the Respondent rights in the disputed domain name.

Furthermore, the Complainant has found no evidence whatsoever that the Respondent is known by 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. This statement is reinforced by the fact that the Complainant has filed the present Complaint soon after the registration of the disputed domain name, intending not to allow the Respondent to be commonly known by the disputed domain name.

Secondly, the Respondent reproduces the Complainant’s earlier registered trademarks CARREFOUR in the disputed domain name without any license or authorization from the Complainant, which is strong evidence of the lack of legitimate interest. Therefore, the Complainant submits that it has not authorized the use of the names “carrefour” or names similar thereto in the disputed domain name in any manner or form.

Thirdly, the Complainant asserts that 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. On the contrary, the disputed domain name resolves either to an error page or a Registrar waiting page. Evidence of this has been provided to the Panel.

Fourthly, since the adoption and extensive use by the Complainant of the trademark CARREFOUR predates the registration date of the disputed domain name, the burden is on the Respondent to establish the Respondent’s rights or legitimate interests that the Respondent may have or have had in the disputed domain name. None of the circumstances, which set out how the Respondent can prove its rights or legitimate interests, are present in this case.

In the light of the above, the Complainant has made a *prima facie* case showing the Respondent’s lack of rights or legitimate interest in respect of the disputed domain name. Considering the above developments, given that the Complainant has made a *prima facie* case that the Respondent lacks legitimate rights or

interest in the disputed domain name, the burden of production shifts to the Respondent, who should come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Considering the above, the Complainant submits that the burden shifts to the Respondent to establish the Respondent's rights or legitimate interests that the Respondent may have or have had in the disputed domain name. The Respondent has not done so, therefore, the second condition under the Policy should be deemed satisfied.

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

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons:

Firstly, the Complainant submits that the Complainant and its trademarks are so widely well-known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights in the name CARREFOUR. Indeed, as indicated above, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by previous UDRP panels for years. See for example, *Carrefour v. rabie nolife*, WIPO Case No. [D2019-0673](#); *Carrefour v. Jane Casares, NA*, WIPO Case No. [D2018-0976](#); *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#); *Carrefour v. Tony Mancini, USDIET Whoisguard, Inc.*, WIPO Case No. [D2015-0962](#); *Carrefour v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2015-0769](#); *Carrefour v. Park KyeongSook*, WIPO Case No. [D2014-1425](#); *Carrefour v. Yujinhua*, WIPO Case No. [D2014-0257](#); *Carrefour v. Karin Krueger*, WIPO Case No. [D2013-2002](#); *Carrefour S.A. v. Patrick Demestre*, WIPO Case No. [D2011-2248](#); *Carrefour v. groupe carrefour*, WIPO Case No. [D2008-1996](#); and *Carrefour SA v. Eric Langlois*, WIPO Case No. [D2007-0067](#). The Respondent had the Complainant's name and trademark in mind when registering the disputed domain name. The Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. Furthermore, a simple search on the Google search engine on "carrefour" and "carrefour carte cadeau" shows top results only related to the Complainant, including its dedicated website "www.cartecadeau.carrefour.fr". Evidence of this has been provided to the Panel. Therefore, at the very least, the Respondent knew or should have known that, when acquiring and using the disputed domain name, he would do so in violation of the Complainant's earlier rights.

Secondly, the Complainant submits that it is highly likely that the Respondent chose the domain name because of its identity with a trademark in which the Complainant has rights and legitimate interests, as well as a domain operated by the Complainant <cartecadeau.carrefour.fr>. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services and products, notably its gift cards service, would instead come across the Respondent's site. Such a disputed domain name does not provide a legitimate interest under the Policy. See *Shaw Industries Group Inc. & Columbia Insurance Company v. Administrator, Domain*, WIPO Case No. [D2007-0583](#), citing *Express Scripts, Inc. v. Windgather Investments Ltd/ Mr. Cartwright*, WIPO Case No. [D2007-0267](#). The Complainant thus states that the Respondent acquired and is using the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier trademarks.

Thirdly, the Complainant's CARREFOUR trademark registrations significantly predate the registration date of the disputed domain name. In this regard, previous UDRP panels have established that knowledge of the Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name, proves bad faith registration. A quick CARREFOUR trademark search would have revealed to the Respondent the existence of the Complainant and its trademarks. Evidence of this has been provided to the Panel. The Respondent's failure to do so is a contributory factor to its bad faith, *Lancôme Parfums Et Beaute & Cie, L'oreal v. 10 Selling*, WIPO Case No. [D2008-0226](#).

Fourthly, as mentioned above, the disputed domain name is used in connection with either an error page or a waiting page of the corresponding Registrar. The non-use of a disputed domain name (including a waiting page) does not prevent a finding of bad faith under the doctrine of passive holding. Indeed, and as indicated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, Overview 3.0, section 3.3 and discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), the relevant issue is not limited to whether the Respondent is undertaking a positive action in bad faith in relation to the disputed domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather fine distinction, but it is an important one. The significance of the distinction is that the concept of a disputed domain name “being used in bad faith” is not limited to positive action.

The Complainant cannot imagine a good-faith use of the disputed domain name, in light of the above, and contends that the latter is being used in bad faith according to the doctrine of passive-holding. In light of all the above elements, the Complainant contends that the disputed domain name was registered and is 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 and by using the disputed domain name, in line with the Policy. The third condition under the Policy is deemed satisfied.

B. Respondent

The Respondent, having been duly notified of the Complaint and of these proceedings, did not reply to the Complainant’s contentions or take any part in these proceedings.

6. Discussion and Findings

To qualify for cancellation or transfer of the disputed domain name, the Complainant must prove each of the following elements of paragraph 4(a) of the Policy, namely:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In accordance with paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

In accordance with paragraph 14(a) of the Rules, in the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the Complaint; and under paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

In accordance with paragraph 10(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

In previous UDRP decisions in which the respondents failed to file a response, the panels’ decisions were based upon the complainants’ reasonable assertions and evidence, as well as inferences drawn from the respondents’ failure to reply. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); and *Köstritzer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#).

Nevertheless, the Panel must not decide in the Complainant's favor solely based on the Respondent's default. See *Cortefiel, S.A. v. Miguel García Quintas*, WIPO Case No. [D2000-0140](#).

In the present case, the Panel must decide whether the Complainant has introduced elements of proof, which allow the Panel to conclude that its allegations are true.

A. Identical or Confusingly Similar

It is well established in previous UDRP decisions that, where the disputed domain name incorporates a complainant's registered trademark, this may be sufficient to establish that the disputed domain name is identical or confusingly similar for the purposes of the Policy. See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#). In the present case, the disputed domain name essentially incorporates the Complainant's Trademarks, and this makes the disputed domain name confusingly similar to the well-known and widely-used Complainant's Trademarks.

The addition of the words "cartecadeaufr" in the disputed domain name does not prevent a finding of confusing similarity between the Complainant's Trademarks and the disputed domain name. See section 1.8 of the [WIPO Overview 3.0](#).

Furthermore, the addition of the gTLD ".info" is also irrelevant in determining whether the disputed domain name is confusingly similar to the well-known and widely-used the Complainant's Trademarks; this being a standard registration requirement of domain names. See *Blue Sky Software Corp. v. Digital Sierra Inc. and Abdullah Khan*, WIPO Case No. [D2000-0165](#).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the well-known and widely-used Complainant's Trademarks, in which the Complainant has demonstrated, to the satisfaction of the Panel, prior rights in and prior commercial use of them. The first element of the Policy, therefore, has been met.

B. Rights or Legitimate Interests

In order to determine whether the Respondent has any rights or legitimate interests in respect of the disputed domain name (paragraph 4(c) of the Policy), attention must be paid to any of the following circumstances, in particular, but without limitation:

- whether there is any evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services before any notice to the Respondent of the dispute;
- whether the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights;
- whether the Respondent is 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.

There is no evidence before the Panel to show that the Respondent was acting in pursuance of any rights or legitimate interests with respect to the disputed domain name. On the contrary, if the Respondent had any such rights or legitimate interests, the Respondent would have reasonably been expected to assert them, which the Respondent clearly has not done so, by not replying to the Complaint or taking any part in these proceedings. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

There is also no evidence before the Panel that the Respondent has been authorized or licensed by the Complainant to use the well-known and widely-used the Complainant's Trademarks. In fact, in the view of the Panel, the adoption by the Respondent of a domain name confusingly similar to the well-known and widely-used Complainant's Trademarks, which the Panel considers, as asserted above by the Complainant, would appear not to be by mere chance but by design, inevitably leads to confusion on the part of Internet users and consumers seeking information about the Complainant and its goods and services.

In fact, in the view of the Panel, the descriptive words "cartecadeau" add to the confusion of Internet users seeking information about the Complainant and its goods and services, in view of the fact that the Complainant's business activities include gift cards, in respect of which the Complainant has a dedicated website incorporating the words "cartecadeau", and also the Complainant is based in France, the letters "fr" being the common abbreviation of the country's name.

Further, the Panel finds that the Respondent is consequentially trading unfairly on the well-known and widely-used the Complainant's Trademarks and also the valuable goodwill that the Complainant has established in them through the Complainant's prior commercial use, without any rights or justification for doing so.

Also, the Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with any *bona fide* offering of goods or services. The use of the confusingly similar disputed domain name, which resolves to an error or waiting page, does not constitute a *bona fide* offering of goods or services. The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. Therefore, for all the above reasons, the Panel concludes that the Respondent has neither rights nor legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Regarding the bad faith requirement, paragraph 4(b) of the Policy lists four examples of acts, which constitute *prima facie* evidence of bad faith. However, this list is not exhaustive, but merely illustrative. See *Nova Banka v. Iris*, WIPO Case No. [D2003-0366](#).

Based on the evidence provided on the record, the Panel considers that the Respondent, by registering the disputed domain name confusingly similar to the well-known and widely used Complainant's Trademarks, is trading unfairly on the Complainant's valuable goodwill established in them.

Also, the effect of such conduct on the part of the Respondent is to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Complainant and its goods and services; or that the Respondent's activities are approved or endorsed by the Complainant. None of which the Panel can find, on the basis of the evidence provided on the record, is, in fact, the situation. Such misleading consequences, in the view of the Panel, are indicative of bad faith on the part of the Respondent. See *Columbia Insurance Company v. Pampered Gourmet*, WIPO Case No. [D2004-0649](#).

Again, in the absence of any explanation to the contrary by the Respondent, of which none is forthcoming on the record, the Panel agrees with the Complainant's contention that the Respondent did not register and use the disputed domain name by chance; but, as noted above, the Respondent used the Complainant's name to register the disputed domain name and, hence, the Respondent appears to have been fully aware of the notoriety of the Complainant and its goods and services, as well as the well-known and widely-used the Complainant's Trademarks and its prior commercial use of them.

Furthermore, the use of the confusingly similar disputed domain name to resolve to an error or a waiting page does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

Finally, the failure of the Respondent to answer the Complaint or take any part in the present proceedings, again, in the view of the Panel and under the circumstance of this case, is another indication of bad faith on the part of the Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Therefore, taking all these particular facts and circumstances into account, and for all the above-mentioned reasons, as well as the arguments advanced by the Complainant in its contentions, as set out above, and also based on the previous UDRP cases cited above, the Panel concludes that the Respondent has registered and is using the disputed domain name 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 disputed domain name <carrefourcartecadeaufr.info> be transferred to the Complainant.

/Ian Blackshaw/

Ian Blackshaw

Sole Panelist

Date: March 20, 2023