

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-0004

1. The Parties

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <sparksupportmafcarrefour.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 2, 2023. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 2023, providing the registrant and contact information behind the privacy service disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 13, 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 January 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on March 3, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant provides goods and services related to supermarkets, retail stores, food and non-food products. It had a turnaround of EUR 81.2 billion in 2021. The Complainant operates more than 13,000 stores in more than 30 countries worldwide, having more than 320,000 employees.

The Complainant owns hundreds of trademark registrations for CARREFOUR in many jurisdictions worldwide, among them International registration Nos. 351147 (registered on October 2, 1968) and 353849 (registered on February 28, 1969), and European Union trademark registration No. 008779498 (registered on July 13, 2010).

The Complainant has numerous domain name registrations consisting of the CARREFOUR trademark. The Complainant has a strong online presence via social media platforms. The fame of the Complainant's trademark is evidenced by numerous UDRP cases.

According to the Complainant, the Respondent registered the Domain Name on November 23, 2022. At the time of drafting the Decision, the Domain Name resolved to parking page with sponsored links to among other links – competing supermarkets.

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 Domain Name. The Complainant provides evidence of trademark registrations and argues that the Domain Name is confusingly similar to the Complainant's trademark and that it incorporates the CARREFOUR trademark with "spark", "support" and "maf" added. The words "spark" and "support" refer to the Complainant's machine learning project to forecast demand for discounted products during promotional campaigns. The term "maf" refers to "Majid Al Futtaim", the Complainant's franchisee in the Middle East.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent reproduces the Complainant's trademark in the Domain Name without any license or authorization from the Complainant. The Complainant asserts that the Respondent is not making any commercial or fair use of the Domain Name. The Domain Name has resolved to an error page. This is not a *bona fide* offering of goods or services under the Policy.

The Complainant argues that the Respondent registered and is using the Domain Name in bad faith. The Complainant believes it is evident that the Respondent was aware of the fact that it incorporated a well-recognized and distinctive trademark in which the Respondent had no prior rights. The lack of active use of the Domain Name (passive holding), does not as such prevent a finding of bad faith. The Domain Name is linked to MX servers which may be used to set up sending and reception of emails for phishing purposes. Moreover, the Respondent is a serial cybersquatter as held by several previous UDRP panels.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark CARREFOUR. In this case, the Domain Name incorporates the CARREFOUR trademark with the words "spark", "support" and "maf". The additions do not prevent a finding of confusing similarity between the Domain Name and the Complainant's trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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

While 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 often impossible 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. 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. The Panel finds that the composition of the Domain Name carries a risk of implied affiliation with the Complainant.

The Panel finds that the Complainant has made out an un rebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with 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.

It is probable that the Respondent was aware the Complainant and its prior rights. The lack of active use of the Domain Name (passive holding), does not as such prevent a finding of bad faith. The Domain Name is linked to MX servers which may be used to set up sending and reception of emails for phishing purposes. Finally, the Respondent appears to be a serial cybersquatter.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 Domain Name <sparksupportmafcarrfour.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: March 10, 2023