

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. sdds sdd, wssfswefoiifnd
Case No. D2023-4550

1. The Parties

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

The Respondent is sdds sdd, wssfswefoiifnd, Tonga.

2. The Domain Names and Registrar

The disputed domain names <carrefourshop01.com> and <carrefourshop02.com> (the “Disputed Domain Names”) are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On November 3, 2023, 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 (Unknown, Tonga) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 November 15, 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 November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on December 27, 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 Euronext Paris Stock Exchange listed company founded in 1959 that operates a business providing supermarkets, retail stores, and convenience stores in 30 countries with sales of EUR 82.2 billion in 2021. The Complainant holds registrations for the trademark CARREFOUR and variations of it in numerous jurisdictions, including, for example, International registration No. 191353, registered on March 9, 1956.

The Complainant owns numerous domain names that comprise of, or contain, the trademark CARREFOUR, including the domain name <carrefour.com>, which was registered on October 25, 1995.

The Respondent registered the Disputed Domain Name <carrefourshop01.com> on October 15, 2023 and it resolves to an inactive webpage. The Respondent registered the Disputed Domain Name <carrefourshop02.com> on October 15, 2023 also, and it resolves to a webpage that contains fields to submit a “phone number” and “password”, displays a “login” button, and is adorned with the Complainant’s Middle East logo.

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 Names.

Notably, the Complainant cites its trademark registrations in numerous countries for the mark CARREFOUR and variations of it, as *prima facie* evidence of ownership.

The Complainant submits that the mark CARREFOUR is well-known and that its rights in that mark predate the Respondent’s registration of the Disputed Domain Name. It submits that the Disputed Domain Names are confusingly similar to its trademark, because the Disputed Domain Names are comprised of the CARREFOUR trademark and that “the addition of the word “shop” and the numbers “01” and “02” is not sufficient to avoid the confusing similarity.”

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because “[t]he Respondent incorporates the Complainant’s trademarks in the [D]isputed [D]omain [N]ames without any license or authorization from the Complainant” and none of the circumstances set out in paragraph 4(c) of the Policy apply.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Names were, and currently are, in bad faith, contrary to the Policy and the Rules having regard to the prior use and well-known nature of the Complainant’s trademark, and advances the argument that the passive holding of the Disputed Domain Name <carrefourshop01.com> would not prevent a finding of bad faith and that the Disputed Domain Name <carrefourshop02.com> “resolves to webpages which show the beginnings of a merchant website and displays the logo that the Complainant commercially uses in the Middle East, [which, it submits] “unequivocally shows that the Respondent is using the [D]isputed [D]omain [N]ames 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 has the burden of proving the following:

- (i) that the Disputed Domain Names are 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 Names; and
- (iii) that the Disputed Domain Names have been registered and are being used in bad faith.

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 Names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["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. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark CARREFOUR in numerous countries.

Turning to whether the Disputed Domain Names are identical or confusingly similar to the CARREFOUR trademark, the Panel observes that each Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant's trademark CARREFOUR; (b) followed by the word "shop"; (c) followed by the numbers "01" or "02", respectively; (d) followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that the gTLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. The relevant comparison to be made is with the second-level portion of each of the two Disputed Domain Names, specifically: "carrefourshop01" and "carrefourshop02", respectively.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the terms "shop" and the numbers, respectively, "01" and "02", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 Disputed Domain Names (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.

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 Names. 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 Names such as those enumerated in the Policy or otherwise.

The Panel notes the evidence that the Disputed Domain Name <carrefourshop01.com> resolves to an inactive webpage, which supports the Complainant's submission on that point and finds that this does not represent a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use, given the substantial reputation and goodwill of the Complainant's mark or capacity to otherwise mislead Internet users.

The Complainant also appears to contend, in summary, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name <carrefourshop02.com> because it is not making a legitimate noncommercial or fair use of that Disputed Domain Name without intent for commercial gain for the reason that it "resolves to a website containing the beginnings of a merchant site". The Panel also notes that the evidence shows the relevant webpage contains fields to submit a "phone number" and "password", displays a "login" button, and is adorned with the Complainant's Middle East logo. Such use suggests that the Respondent intends to impersonate the Complainant in a phishing campaign or fake orders scam.

Panels have held that the use of a domain name for illegal activity such as phishing, 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.

Based on the available record, the Panel finds the second element of the Policy has been established for both of the Disputed Domain Names.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Names and the well-known nature of the Complainant's trademark, the Panel is satisfied that the Respondent knew of and targeted the Complainant's trademark CARREFOUR when it registered the Disputed Domain Names (see *Carrefour v. Richard Mandanice*, WIPO Case No. [D2002-0623](#) ("The Complainant is the owner of at least two well-known CARREFOUR trademarks"); *Carrefour S.A. v. Damian Macafee*, WIPO Case No. [D2002-1060](#) ("the trademark CARREFOUR is internationally well-known"); *Carrefour v. Iwama*, WIPO Case No. [D2007-1522](#) ("the Complainant's well known Trademark"); *Carrefour, S.A., Viajes Carrefour S.L. v. Pablo Iglesias Jurco*, WIPO Case No. [D2008-1040](#) ("the Panel finds that the trademark CARREFOUR is well-known")).

This Panel finds that there is no reason for the Respondent to have registered the Disputed Domain Names other than to trade off the reputation and goodwill of the Complainant's well-known trademark. [WIPO Overview 3.0](#), section 3.1.4.

Further, a gap of several years between registration of a complainant's trademark and respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration. In this case, the Respondent registered the Disputed Domain Names some 67 years after the Complainant established registered trademark rights in the CARREFOUR mark.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name <carrefourshop01.com> does not currently resolve to an active website.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name <carrefourshop01.com> does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the Complainant's well-known trademark, and the composition of the relevant Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name <carrefourshop01.com> does not prevent a finding of bad faith under the Policy.

In the case of the Disputed Domain Name <carrefourshop02.com>, Panels have held that the use of a domain name for illegal activity here, alleged phishing, impersonation or passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Complainant supplied evidence that shows the relevant webpage contains fields to submit a "phone number" and "password", displays a "login" button, and is adorned with the Complainant's Middle East logo. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name <carrefourshop02.com> constitutes bad faith under the Policy.

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 Names <carrefourshop01.com> and <carrefourshop02.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: January 10, 2024