

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. UYZDZY, DEJUR dabi¹

Case No. D2022-4382

1. The Parties

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

The Respondent is UYZDZY, DEJUR dabi, France.

2. The Domain Name and Registrar

The disputed domain name <fr-carrefourauthenticate.online> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 18, 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 21, 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 22, 2022. In accordance with the Rules,

¹ The Complaint against this Respondent was originally filed against “See PrivacyGuardian.org”, a privacy service found in the publicly available Whois details. The identity of this Respondent was subsequently disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name. The amended Complaint lists the person disclosed by the Registrar as the Respondent.

paragraph 5, the due date for Response was December 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 13, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on December 18, 2022. 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, a company registered in France and listed on the Paris Stock Exchange, is a world leader in retail goods sales and has pioneered in 1968 the creation of the first hypermarkets. It operates more than 12,000 stores in over 30 countries, with more than 384,000 employees worldwide and 1.3 million visitors daily in its stores. Besides retail, the Complainant offers banking, insurance, ticketing and travel services.

The Complainant owns a very large portfolio of trademarks containing the distinctive element CARREFOUR, including the International trademark CARREFOUR, registered under No. 351147 on October 2, 1968 and the International trademark CARREFOUR, registered under No. 353849 on February 28, 1969 (together hereinafter referred to as: "the Mark").

The Complainant also owns the <carrefour.com> domain name, registered on October 25, 1995, and many other domain names related to its activities, incorporating the element "carrefour".

The disputed domain name was created on September 15, 2022.

The Complainant has submitted evidence that the disputed domain name resolved to an error page.

5. Parties' Contentions

A. Complainant

(i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and are confusingly similar to the Mark, insofar as the disputed domain name contains the Mark in its entirety, preceded by the country-code for France "fr" and a hyphen and followed by the English word "authenticate", such additions not being capable of dispelling the confusing similarity.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends it never authorized the Respondent to use the Mark in any manner and that the Respondent has no license from the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith and alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.

(iv) The Complainant submits that by its passive holding, the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to Respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of Paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name, it is evident that the latter consist of the Mark, preceded by the country-code for France "fr" and a hyphen and followed by the English word "authenticate" and the generic Top-Level Domain ("gTLD") ".online".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the elements "fr" before the Mark or "authenticate" after the Mark do not dispel the confusing similarity, and that the Mark remains recognizable in the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Mark.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name.

The disputed domain name resolves to an error page.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent received (i) no license from the Complainant and (ii) no authorization from the Complainant to register or use the disputed domain name.

Furthermore, the nature of the disputed domain name, insofar as it is similar to the Mark, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

Accordingly, 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.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name confusingly similar to the Mark.

It has been established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, given that the Mark is distinctive and well known, as was recognized in a number of UDRP decisions (see for instance *Carrefour v. Yunjinhua*, WIPO Case No. [D2014-0257](#); *Carrefour v. Park KyeongSook*, WIPO Case No. [D2014-1425](#); *Carrefour v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2015-0769](#); *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#); *Carrefour v. Jane Casares, NA*, WIPO Case No. [D2018-0976](#); *Carrefour v. Jean-Pierre Andre Preca*, WIPO Case No. [D2018-2857](#); *Carrefour v. Perfect Privacy, LLC / Milen Radumilo*, WIPO Case No. [D2019-2610](#) and *Carrefour v. Contact Privacy Inc. Customer 0155401638 / Binya Rteam*, WIPO Case No. [D2019-2895](#)), the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

In addition, it is well established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. [D2000-0004](#); and *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Prior UDRP panels have also held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)). The Panel finds it is indeed not possible to imagine any plausible future active use of the disputed domain names that would not be illegitimate, considering the specificity of the Complainant's activities (including banking and insurance services) and the composition of the disputed domain name.

Moreover, in this case, the Respondent used a privacy service to hide its identity. Although using a proxy or privacy service to hide the identity of the registrant is not *per se* conclusive of bad faith registration and use (see *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#)), the Panel notes that the fact that the Respondent used a privacy service to hide its identity and contact details prevented the Complainant from contacting it. Prior UDRP panels have held that concealment of identity and contact information may in certain circumstances be indicative of registration in bad faith (see *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#), and *Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#)). See section 3.2.1 of the [WIPO Overview 3.0](#). Furthermore, when registering the disputed domain name, the Respondent provided false or incomplete contact details that prevented the courier service from delivering the Center's written communications.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names would have a duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others which would infringe upon or otherwise violate the rights of a third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitutes bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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, <fr-carrefourauthenticate.online>, be transferred to the Complainant.

/Louis-Bernard Buchman/
Louis-Bernard Buchman
Sole Panelist
Date: December 29, 2022