

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. WhoisSecure / Laurent Zewitch
Case No. D2022-0917

1. The Parties

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

The Respondent is WhoisSecure, United States of America / Laurent Zewitch, France.

2. The Domain Name and Registrar

The disputed domain name <verif-carrefour-france.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2022, 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 March 21, 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 March 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 March 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on April 22, 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 is the French entity Carrefour, a worldwide leader in retail. The Complainant operates, under the brand CARREFOUR, over 12,000 stores and e-commerce sites in more than 30 countries. Its operations started in France in the early 1960s, and to date the group employs over 380,000 people around the globe and generates sales beyond EUR 76 billion in 2018. The presence of the Complainant in France is particularly relevant. This is the home country of the Complainant, where its first store was opened. It generates nearly fifty percent of its sales in this country alone. The Complainant also operates in particular banking and financial services.

The Complainant holds hundreds of trade marks worldwide over CARREFOUR, and it relies on *inter alia*, the following trade mark registrations as a basis for its Complaint:

International trade mark CARREFOUR (word) No. 351147, registered on October 2, 1968;

International trade mark CARREFOUR (word) No. 353849, registered on February 28, 1969.

The disputed domain name was registered on February 4, 2022, through a privacy shield service. The identity of the Respondent, an individual domiciled in France, was disclosed by the Registrar in the course of this proceeding.

The disputed domain name resolves to an inactive website. However, the Complainant has filed with the Complaint a screenshot of an Internet browser indicating that access to the disputed domain name was blocked, as it might contain malware.

5. Parties' Contentions

A. Complainant

As a preliminary remark, the Complainant indicates that the trade mark CARREFOUR was considered well known, or famous, by numerous UDRP decisions, and quotes a number of supporting precedents.

Regarding the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its earlier trade marks CARREFOUR. Indeed, it incorporates the word CARREFOUR, together with the words "verif" and "France", separated with hyphens. These generic names do not diminish the likelihood of confusion, and the Complainant's trade marks remain immediately recognizable in the disputed domain name.

Regarding the second element of the Policy, the Complainant adduces in particular that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trade mark, or to seek registration of any domain name incorporating said trade mark. Furthermore, the Respondent cannot claim prior rights or legitimate interests in the disputed domain name as "carrefour". The Complainant conducted searches which did not provide any positive result. The Complainant also notes the lack of *bona fide* use of the disputed domain name, prior to the filing of the Complaint.

Finally, regarding the third element of the Policy, the Complainant develops the following arguments: first, the Respondent could not ignore the existence and reputation of the trade marks CARREFOUR. Second,

the Respondent chose to incorporate the Complainant's trade mark CARREFOUR in the disputed domain name "in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's domain". Third, a quick search would have revealed the existence of the trade marks of the Complainant, which significantly predate the registration of the disputed domain name. Fourth, "By simply maintaining the domain name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain name. In addition, the domain name resolves to an error page. The non-use of a domain name (including an error page) does not prevent a finding of bad faith under the doctrine of passive holding". Fifth, the Respondent attempted to conceal his identity by using a privacy service. And finally, the Complainant states that it cannot conceive any good faith use of the disputed domain name in the future.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

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

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the trade mark CARREFOUR.

The disputed domain name <verif-carrefour-france.com> includes the Complainant's trade mark in its entirety, combined with the terms "verif" and "france". These three words are separated with hyphens. These additions do not prevent the Complainant's trade mark from being immediately recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

As the disputed domain name includes the Complainant's trade mark in its entirety combined with terms that do not prevent the Complainant's trade mark from being recognizable in the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Therefore, the first element of the Policy is satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent

carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

As indicated by the Complainant, the Respondent does not appear to be known by the disputed domain name, or to have been licensed or otherwise authorized by the Complainant to use its trade mark in a domain name or otherwise.

Likewise, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Actually, this Panel finds unplausible a claim of use of the disputed domain name in a generic way or in a fair way; rather, the addition of the elements “verif” and “france” make a clear connection with the services provided for by the Complainant, in particular its banking and financial services.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed 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.

The Panel concurs with the Complainant that the disputed domain name was registered, and is being passively used in bad faith by the Respondent.

The factors which are normally taken into account for a finding of bad faith passive holding are listed in section 3.3 of the [WIPO Overview 3.0](#), as follows: (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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

All these factors are met in this case:

First, the Complainant's trade mark CARREFOUR is very well-known, as proven by the Complainant and recognized in countless UDRP decisions. The Respondent, who is domiciled in France, is certainly aware of the existence of this trade mark. Again, the addition of the elements “verif” and “France” in the disputed domain name indicates that the Respondent knows the Complainant and its activities: on the one side, the

word “verif” suggests a possible use in connection with banking and financial services, namely to verify the access data of the Complainant’s customers. On the other side, the reference to the country name “France” suggests that such verification is specifically aimed at the customers of the Complainant who are actually based in France.

Second, the Respondent has failed to file a response to the Complaint.

Third, the Respondent has taken active steps to conceal its true identity, by using a privacy shield service.

Fourth, the Panel does not conceive any possible use in good faith of the disputed domain name. Much the contrary: for the reasons indicated above, the disputed domain name was possibly used or is likely to be used in the future for illegal phishing activities.

To conclude: a finding of bad faith registration and passive use is in order, and accordingly, the third criteria set out in paragraph 4(a) of the Policy is also satisfied.

In addition, the Panel notes that, as initially evidenced by the Complainant, the disputed domain name might be used to distribute malware. This would also be bad faith use.

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 <verif-carrefour-france.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: May 2, 2022