

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Dao Vu Hung, Brand Review and Consumer Protection
BRACP Limited Company
Case No. D2022-2603

1. The Parties

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

The Respondents are Dao Vu Hung, Viet Nam, Brand Review and Consumer Protection BRACP Limited Company, Viet Nam, self-represented.¹

2. The Domain Name and Registrar

The disputed domain name <reviewcarrefour.com> (the “Disputed Domain Name”) is registered with Mat Bao Corporation (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 19, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on July 20, 2022.

On July 19, 2022, the Center sent an email in English and Vietnamese to the Parties regarding the language of the proceeding. The Respondent commented on July 20, 2022 that he has no objections to the Complainant’s request that English be the language of proceeding. The Complainant confirmed its request that English be the language of the proceeding on July 20, 2022.

¹ The Registrar confirms Dao Vu Hung is the registrant of the Disputed Domain Name. However, the Respondent requests the Panel to consider both Dao Vu Hung and Brand Review and Consumer Protection BRACP Limited Company (in Vietnamese: Công ty TNHH Đánh giá thương hiệu và Bảo vệ người tiêu dung BRACP) as the Respondents. References to “the Respondent” are to either or both of them. The Panel will discuss this matter under the section 6.1.C of the decision.

On July 27, 2022, the Complainant requested the suspension of the proceeding. The Center confirmed on the same day that the proceeding was suspended until August 26, 2022 for purposes of settlement discussions concerning the Disputed Domain Name. The Parties did not reach settlement, and the Center notified the reinstatement of proceeding on August 29, 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 August 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2022. On September 2, 2022, the Center received the Supplemental Filing filed by the Complainant. On September 14, 2022, the Respondent requested an extension to the Response due date. On September 15, 2022, the Center confirmed that the due date for Response was extended to September 22, 2022, pursuant to paragraph 5(b) of the Rules. The Response was filed with the Center on September 22, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on September 27, 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.

On September 30, 2022, the Panel issued a Procedural Order giving the Respondent leave to comment on the matters referred to in the Complainant’s Supplemental Filing. On October 10, 2022, the Respondent provided such comments. For reasons discussed below the Panel will admit the Complainant’s Supplemental Filing and the Respondent’s comments on it.

4. Factual Background

The relevant facts can be summarized as follows:

The Complainant is a multinational retail company headquartered in France. It had a turnover of EUR 81 billion in 2021. It is listed on the index of the Euronext Paris Stock Exchange. The Complainant operates more than a thousand stores in more than 30 countries worldwide. It has more than 384,000 employees worldwide and 1.3 million daily unique visitors to its websites.

The Complainant is the owner of many trademarks for the word CARREFOUR including, for example, International Trade Mark registration No. 351147 for CARREFOUR, registered on October 2, 1968. These trademarks are referred to as the “CARREFOUR trademarks” in this decision.

The Complainant is also the owner of many domain names including the trademark CARREFOUR including <carrefour.com>, registered on October 25, 1995.

The Disputed Domain Name was registered on February 18, 2022. It does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

In summary the Complainant’s case is as follows:

The Complainant says that the Disputed Domain Name is confusingly similar to its CARREFOUR trademarks as it simply adds a descriptive word to that trademark.

The Complainant says that the Respondent has no rights or legitimate interests in the trademark CARREFOUR.

The Complainant says that the Respondent's registration and use of the Disputed Domain Name is in bad faith. In the amended Complaint, it relied on principles applicable to the situation where a domain name is confusingly similar to a well-known trademark but the domain name has not actually been used.

In its Supplemental Filing the Complainant drew attention to *Compagnie Générale des Établissements Michelin v. Nguyen Hong Xuan Quy*, WIPO Case No. [D2022-1018](#) was decided after the filing date of the present Complaint. It transpires that there is no dispute that the respondent in WIPO Case No. [D2022-1018](#) and the Respondent in the present case are the same entity, so the Panel does not need to address the Complainant's arguments on this issue. The Complainant says that the Respondent has admitted in correspondence that he intends to use the Disputed Domain Name to link to a website which will be similar in principle to the websites considered in the WIPO Case No. [D2022-1018](#) decision. Again it is not in dispute that this is the Respondent's intention so the Panel does not need to address the detail of the Complainant's case in this regard.

The Complainant in effect says the same principles as the Panel applied in WIPO Case No. [D2022-1018](#) should be applied to the present case (see discussion below) and that the Respondent's plans do not amount to establishing a legitimate interest in the Disputed Domain Name in question as the Respondent does not intend to set up a *bona fide* criticism site but rather a pretextual website intended to provide a justification for his activity. The Complainant suggests that the Respondent is using a similar business model to that found in what it describes as the "Pat Honey Salt" cases – see *e.g.*, *Compagnie Générale des Établissements Michelin and MC PROJECTS B.V Maastricht v. Pat Honey Salt, Honey Salt Limited*, WIPO Case No. [D2020-2517](#), which concerns domain names in the ".sucks" Top Level Domain. It says the Respondent has created certain differences to the review websites he has published as compared to the websites concerned in the "Pat Honey Salt" cases. The Complainant says he has done so in order to try to avoid the reasoning in the "Pat Honey Salt" cases which led to adverse findings against the respondents concerned.

The Complainant also says that the Respondent's true motives are shown by an email it sent following the WIPO Case No. [D2022-1018](#) decision dated August 16, 2022 in which the Respondent offered to transfer the Disputed Domain Name to the Complainant and said: "However, in return, please understand that we wish to receive a reasonable support from your side. Particularly, we expect that your client may donate us about 1,000 USD, which helps us to recover our expenses for domain name registration and website development, etc. We also understand that if both parties reach an amicable settlement, the Complaint will be withdrawn, and the WIPO Center will refund you 1,000 USD. In such scenario, it is clear that no further expense incurs to your client".

The Complainant says this shows that:

1. Publicly, the Respondent pretends that he defends freedom of expression but in private, the Respondent shows his true colors and asks for money.
2. The Respondent deliberately omitted to send a copy of this email to the Center which the Respondent says he considers to be "corrupted". The Complainant rather believes that the Panel would be closer to the truth by considering that the Respondent wanted to hide his true intentions from the Panel and the Center.
3. The Respondent demonstrates that he is well versed in UDRP procedures and is trying to earn USD 1,000 here and USD 1,000 there. The Complainant suspects that the Respondent uses the same *modus operandi* with each trademark owner.

4. The Respondent expects the Complainant to “donate” a certain sum of money “to recover [its] expenses for domain name registration and website development, etc”. Such a request is outrageous. The Complainant can legitimately assume that the Respondent requests a so-called “donation” from each trademark owner concerned (probably a few dozen), while the Respondent’s investment seems very limited since it is the same website template that is replicated for each domain name. Moreover, in the present case, the Disputed Domain Name is not even used. Why should the Complainant pay for the Respondent’s choices?

5. The Respondent's offer also calls into question his sincerity since the Respondent is ready to abandon a project on freedom of expression. At first, the Respondent wanted to appear as a defender of freedom speech, while his only goal is to make money through cybersquatting. It is, once again, a subterfuge to sell the domain names to the aggrieved trademark owners. The Complainant, who is deeply attached to freedom of expression, refuses to compromise with the Respondent. Freedom of expression is a serious subject that cannot be taken as a pretext or hostage by cybersquatters.

B. Respondent

The Respondent in his Response expressly declined to comment on the Complainant’s Supplemental Filing which he said should not be admitted. He went on to request that if the Panel should admit it, he should be afforded an opportunity to comment upon it (which was a request the Panel acceded to).

The Respondent says that he was disappointed with the decision in WIPO Case No. [D2022-1018](#) which he considered to be unfair. He then says he is filing the Response not to protect the Disputed Domain Name in the proceedings before the Center, but “simply to show our great effort in protecting our fame and reputation, and we are ready to initiate a lawsuit at the Court of [Viet Nam], like what we did with the domain name <reviewmichelin.com> in the WIPO Case No. [D2022-1018](#)”. The Respondent also says that he has offered to accept transferring the Disputed Domain Name to the Complainant on a complimentary basis to terminate the case.

The Respondent says that the substantive Respondent is a company called Brand Review and Consumer Protection BRACP Limited Company (“BRACP”) which has been granted Business License No. 0109932642 on March 15, 2022 by the Business Registration Office of Hanoi, Viet Nam. He says the main business activity of BRACP is “market research and public opinion polls”. He requests that the Panel to recognize both BRACP and Dao Vu Hung as the Respondent in this case.

The Respondent agrees that the Disputed Domain Name is confusingly similar to the CARREFOUR trademark, although says that it was registered and is being used in good faith.

The Respondent agrees that at the time of writing the Response, the Disputed Domain Name is resolving to a blank page, but it does not mean that his conduct is “passive holding”. In fact, he says he intends to set up a website for the purpose of obtaining the consumer’s review and rating toward the Complainant’s CARREFOUR trademark, similar to his other websites using brands such as Michelin, Facebook , and Sodexo. He says that even in the WIPO Case No. [D2022-1018](#), the previous panel found that: “the Panel is willing to accept the Respondent’s explanation that it had prepared templates for this and similar websites”.

The Respondent says in support of having a legitimate interest as follows:

“As you know, we were being the [r]espondent in several disputes with other trademark owners, particularly Michelin (WIPO Case No. [D2022-1018](#)) and Sodexo (WIPO Case No. [D2022-0769](#)). Hence, before creating a website on the domain name <reviewcarrefour.com>, we need to reassess our activities carefully, and make some updates/corrections to our website template. In fact, we lose the WIPO Case No. [D2022-1018](#) before WIPO Center, and we are now thinking about possible solutions to avoid the risk that our other domain names could be taken away.

Accordingly, the Respondent hereby declares that we have an intention to make a legitimate noncommercial use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the CARREFOUR trademark, and we demonstrate our preparation for such use as below:

(i) The Disputed Domain Name consists of the trademark CARREFOUR and the critical term 'review'. Hence, the nature of domain name itself tends to communicate that there is no affiliation between the trademark owner and domain name Registrant (please see Section 2.5.1, [WIPO Overview 3.0](#));

(ii) In general, we could create a website associated with the Disputed Domain Name similar to the website 'https://reviewmichelin.com/', in which our logo "BRACP" will be displayed prominently and we will place some disclaimer to eliminate the possibility of confusion to the public regarding the relationship between us and the Complainant, such as: 'Independent review for CARREFOUR services' and 'Disclaimer: This website is operated by Brand Review and Consumer Protection (BRACP) for non-profit purposes. We have no relationship or affiliation with the owner of CARREFOUR brand'.

(iii) The Respondent owns only one domain name containing CARREFOUR trademark. We do not try to 'corner the market' in domain names that reflect the trademark CARREFOUR.

(iv) Although 'Ok Data test' is not applicable in this case, but Panels in many previous cases found that even a reseller or distributor is still able to make a fair use of domain name identical/confusingly similar to a registered trademark if some specific requirements are met.

(v) We intend to use the sign CARREFOUR in the Disputed Domain Name and its associated website to create an online location, where the Internet users around the world can freely share their opinions, comments and ratings for the services under CARREFOUR trademark.

(vi) We will not sell any products/services through the domain name/website, or gain any profit even from advertising. In other words, the disputed domain name is totally used for noncommercial purpose.

(vii) The visitors could click on 'WRITE YOUR NEW REVIEW' to start writing their reviews about the services under CARREFOUR trademark and select a rating of 1-5 stars. Thereafter, the reviews will be published on the website, other visitors can like, dislike, share, and reply to the reviews. Besides, an average rating will be calculated, based on all ratings from reviewers.

(viii) If the Complainant finds any false review in our website, they can simply submit a 'Request for deleting content' or send us a message/email.

(ix) Panels of previous UDRP cases repeatedly confirmed that the Respondent could have rights or legitimate interests in respect of the domain names, which are used for criticism purposes, no matter whether the criticisms are right or wrong. In WIPO Case No. [D2016-2608](#) (*Azimo Ltd. v. Vladimir Zubkov*), the Panel found that: 'On balance, Respondent satisfies the Panel that it is appropriate to draw an inference that the Domain Name is being used as part of a genuine criticism site and that Respondent is not primarily motivated by commercial considerations, but by what he perceives (rightly or wrongly) to be a genuine grievance arising from alleged bad service. The Panel has sympathy for Complainant in terms of the way it attempted to deal with Respondent's grievances and allegations and misgivings about the manner in which Respondent has dealt with the matter. However, the merits or otherwise of the grievances are not matters which need be or can be determined by the Panel'.

In light of the foregoing, there is no doubt that the Respondent has rights and legitimate interests in respect of the disputed domain name, and the Complainant fails to prove the second element under paragraph 4(a) of the Policy."

In relation to bad faith registration and use the Respondent disputes the finding in WIPO Case No. [D2022-1018](#) that the reviews on its websites are fake. It points to other reviews on third party sites which are short and says that shortness is not a proper basis for concluding that its reviews are fake. He also

says that in fact, it is not always the case that the reviews/comments on his websites are short and not detailed. For example, a Facebook user named "Tania" wrote a long comment to criticize Facebook at "https://reviewfacebook.com/review/40". If Tania can write a long review/comment, it is also possible that other users could write similarly lengthy reviews/comments on the website associated with the domain name <reviewcarrefour.com> once it is established, as well as on his other websites. The Respondent says that by hijacking his domain names through this unjustifiable UDRP proceeding, the trademark owners like MICHELIN and CARREFOUR are taking away the chances of Internet users like Tania to express their opinions towards the brands on his websites.

The Respondent says that the above arguments and analysis illustrate that he is seriously trying to create the websites under his domain names, including the Disputed Domain Name, solely for a noncommercial purpose. He says that a negative decision in WIPO Case No. [D2022-1018](#) should not automatically result in another decision against him in the current case. He draws attention to *Philip Morris USA Inc. v. Gideon Black*, WIPO Case No. [D2015-0333](#) which concerned the domain name <marlboro.reviews> which was resolving to a "Website Coming Soon" page. In that case the panel found that: "Complainant has failed to demonstrate that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b) of the Policy; the Complaint must therefore fail". In the current case, when the Disputed Domain Name is also resolving to a blank page, the same viewpoint should be adopted, especially when the Respondent is showing that the Disputed Domain Name will be used for good purpose in the future.

Finally the Respondent says that he is also proud that by registering and using the Disputed Domain Name he is contributing to the protection of consumer rights as well as the freedom of speech. He says he believes that consumers should have the right to raise their voices and share their reviews/opinions about brands, even if their reviews are positive or negative. Similarly, in *Landmark Lofts Limited v. Anonymousspeech Anonymousspeech*, WIPO Case No. [D2014-1748](#), the previous panel wrote: "This Panel considers the preservation of the free exchange of ideas via the Internet to be of significant importance, as reflected in paragraph 4(c)(iii) of the Policy. This paragraph must be given real meaning."

In relation to the Complainant's Supplemental Filing the Respondent submitted very lengthy comments. The Panel has read them but does not propose to set them all out in detail as in large measure they simply develop further points already made in the Response. The main additional points that the Respondent makes are as follows:

The Respondent denies any knowledge of the "Pat Honey Salt" cases identified by the Complainant and says his websites are its own idea. He says his websites do not carry any advertising or commercial content. He says that he runs "this project because we are bored and sick of the fact the consumer rights and freedom of speech are throttled by the big corporations like the Complainant".

The Respondent says the word "donate" in the correspondence the Complainant identifies is not a demand for the sum in question but only a suggestion. He identifies other Internet based bodies which solicit donations and says he is the same. He also suggests that the Complainant's representative has refused to agree to settle the present case on the terms he has proposed so that it can earn more fees.

In order to show its effort of avoiding further disputes with other trademark owners, the Respondent submitted its legal representative's correspondence with Virgin Enterprises Limited in which it proposed to transfer a similar domain name to Virgin Enterprises Limited.

The Respondent says that if he loses the present proceeding he is ready to initiate a lawsuit in a Vietnamese Court, not only for protecting freedom of speech and consumer's rights, but more importantly, for protecting his fame and reputation before the public.

6. Discussion and Findings

6.1 Preliminary Matters

A. Language of Proceeding

The Complaint was filed in English. However, the Registrar confirms the language of the Registration Agreement is Vietnamese.

Paragraph 11(a) of the Rules provides: “Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

Having considered the following factors, the Panel determines that the language of the proceeding shall be English:

- a) the Center invited the Parties in English and Vietnamese to comment on the language of proceeding;
- b) the Respondent replied to the Center’s email in English indicating it does not object to English being the language of proceeding; and
- c) the Respondent’s communications and submissions are in English, which indicates the Respondent is conversant in English.

B. Supplemental Filing

The Panel will admit the Complainant’s Supplemental Filing as it related to matters which post-dated the Complaint – specifically the decision in WIPO Case No. [D2022-1018](#) which the Panel considers to be relevant. The Panel acceded to the Respondent’s request to comment on this Supplemental Filing if it was admitted. The Panel also admits the Respondent’s comments on this Supplemental Filing.

C. Respondent Identity

So far as the Respondent identity is concerned, the Panel agrees to the Respondent’s request to treat the registrant Dao Vu Hung and BRACP as the Respondents in this case. References to the Respondent are to either or both of them.

6.2 Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the CARREFOUR trademarks. The Respondent concedes that the Disputed Domain Name is confusingly similar to these trademarks.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, 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; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the CARREFOUR trademarks. The Complainant has prior rights in the CARREFOUR trademarks which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Respondent says the scenario under paragraph 4(c)(iii) applies and that he 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. The Respondent says his intention is to set up a legitimate noncommercial review site.

The question is whether the Panel accepts this explanation from the Respondent. As the panel in *Compagnie Générale des Etablissements Michelin v. Nguyen Hong Xuan Quy*, WIPO Case No. [D2022-1018](#) put it "It is the task of the Panel in this case, therefore, to determine whether the Respondent's website associated with the disputed domain name is a genuine criticism or review site, as the Respondent submits, or alternatively a pretext for a bad-faith registration of a domain name which is intended to take unfair advantage of the Complainant's trademark". The same is the issue in the present case.

In seeking to answer this question the Panel has visited the websites linked to various domain names managed by the Respondent such as <reviewaccor.com>, <reviewelectrolux.com>, <reviewfacebook.com>, <reviewheets.com>, <reviewiqos.com>, <reviewswarovski.com>, and <reviewsodexo.com>. None of the websites carries any advertising or click through links. They all also carry a disclaimer typically in the following form "Disclaimer: This website is operated by Brand Review and Consumer Protection (BRACP) for non-profit purposes. We have no relationship or affiliation with the owner of ELECTROLUX brand".

All of the websites in question are clearly based on an identical template and each involve a relatively small number (typically less than ten) of generally very short and non-specific reviews. Almost all of them commence chronologically with a review placed by the Respondent which typically says something like: "This is the first review from [Viet Nam]. Please give your personal reviews and rating for [brand], even you like or hate it". This is then followed by a small number of short (typically one line) reviews such as: "I purchased 1 [brand product] few months ago, and totally regret for this stupid choice"; "[brand] is still a big brand, but.."; and "My family always choose [brand], due to its outstanding quality."

As far as the Panel can see there is only one review at any of the websites the Panel has visited which

departs from the anodyne one-line nature displayed in the reviews quoted above. That is the review identified by the Respondent placed by “Tania” on the website linked to the domain name <reviewfacebook.com>. That review is a paragraph long and is expressed in emotional terms which are highly critical of Facebook and some of its policies. Interestingly it appears to be the only review on any of the Respondent’s websites where the user concerned actually has any personal information displayed alongside their name.

Having carefully reviewed this material the Panel can do no more than agree with the Panel in *Compagnie Générale des Etablissements Michelin v. Nguyen Hong Xuan Quy*, WIPO Case No. [D2022-1018](#) as to how to assess what the Respondent is doing. Specifically the Panel adopts the following reasoning of the previous panel:

“What the Panel does not, however, accept is that the supposed reviews found on the Respondent’s website are genuine. The reviews are very similar in style, comprising short, vague and highly generic statements about the MICHELIN brand, such as ‘Michelin is always my first choice for car’ or ‘Price is a bit high, but quality is acceptable’.”

“None of the reviews appears to relate to any specific product or service provided by the Complainant, nor to any specific customer transaction, post-sale query, customer service experience or any other specific interaction with the Complainant which may have made a particularly good or bad impression on the relevant customer.”

“The Panel also considers it relevant to this case to consider the content found on the Respondent’s other ‘review’ websites, which are referenced by both the Parties. These supposed reviews follow a very similar style and pattern as above, none of which appear to the Panel to constitute substantive and genuine reviews of the relevant trademark owner’s goods or services. The reviews state, for example:

‘Electrolux is still a big brand, but...’
‘I buy a lot of Lego sets for my boy.’
‘Products are ok.’
‘I hate this brand so much. Poor quality product.’
‘Not good but not so bad quality.’”

Overall the present Panel also concludes that it is more likely than not that the reviews placed on the Respondent’s websites are not genuine third party reviews but have been placed there by the Respondent to create an aura of legitimacy intended to enable him to claim a legitimate interest when none exists. The sole exception would appear to be the review placed by “Tania” (see above) which the Panel infers more likely than not is a genuine third party review. The fact that one third party may have placed a genuine review on one of the Respondent’s websites (if that is what has happened) does not in the Panel’s opinions alter the overall analysis.

The Panel also agrees with the panel in *Compagnie Générale des Etablissements Michelin v. Nguyen Hong Xuan Quy*, WIPO Case No. [D2022-1081](#) as to the Respondent’s likely motives – see below.

The Panel has also considered the fact that (as described above) the Respondent’s websites carry a disclaimer. The Panel does not consider this assists the Respondent. This issue is discussed in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), paragraph 3.7: “How does a disclaimer on the webpage to which a disputed domain name resolves impact a panel’s assessment of bad faith?”

“In cases where the respondent appears to otherwise have a right or legitimate interest in a disputed domain name, a clear and sufficiently prominent disclaimer would lend support to circumstances suggesting its good faith. For example, where a respondent is legitimately providing goods or services related to the complainant’s mark only (see *Okidata* and its progeny discussed at 2.8), the presence of a clear and

sufficiently prominent disclaimer can support a finding that the respondent has undertaken reasonable steps to avoid unfairly passing itself off as related to the complainant, or to otherwise confuse users.

On the other hand, where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused."

For the reasons discussed above the Panel does not consider the Respondent has a right or legitimate interest in the Disputed Domain Name and accordingly the Panel does not consider the disclaimers assist the Respondent.

The Panel therefore finds that the Respondent has failed to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds that the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel again notes and agrees with the Panel's reasoning in *Compagnie Générale des Etablissements Michelin v. Nguyen Hong Xuan Quy*, WIPO Case No. [D2022-1018](#) as follows:

"Furthermore, the Respondent has not explained to the satisfaction of the Panel its motivation in creating the 'BRACP' company and setting up its 30 'review' websites related to third-party trademarks, including the website linked to the disputed domain name. Plainly the Respondent has incurred expense in connection with the company registration, website development and (on its own submissions) in legal fees relating to the present proceeding. Yet the Respondent states that it intends to receive no revenues whatsoever in connection with the websites in question.

While it is not unusual for a criticism site to be created for noncommercial reasons, there is generally a comprehensible motivation for the creation of such a site: for example, the registrant may have had a bad experience with the trademark owner's goods or services, or the registrant may have some specific social or political motivation for creating the site in question.

Here, however, the Respondent has registered 30 domain names relating to third-party trademarks, none of them having any apparent connection with the Respondent or indeed with one another, save that, on the Respondent's own case, they are well known trademarks.

In all the circumstances of the case, the Panel rejects as highly improbable the Respondent's explanation that there was no commercial motivation for its actions and that: '[w]e establish the website simply to protect the right of consumer and freedom of speech, which is our goodwill and passion.'

While the Panel is unable to discern the Respondent's precise motivation in registering the disputed domain name, the Panel considers it most likely that the registration of the disputed domain name and the operation of the related website represent part of a wider scheme devised by the Respondent in the hope of avoiding adverse findings under the UDRP and ultimately selling the domain names in question to the relevant trademark owners. The Panel notes in this regard the Respondent's statement that it 'want[s] to know the outcome of this dispute' before moving forward with its investment, and also – quite tellingly in the Panel's view – its statement to the Complainant that '[t]here is always room for discussion and negotiation to settle the dispute amicably, we believe.'"

In the present case it seems to the Panel that the Respondent if faced with a UDRP complaint has adopted a strategy of offering to transfer the Disputed Domain Name to the Complainant in return for a "donation" of USD 1,000 while at the same time indicating that this will cost the Complainant nothing further, as if the Complainant then discontinues the Complaint, it will receive a refund of USD 1,000 from the Center. The Panel accepts the Complainant's submissions that this shows the Respondent has a well-developed familiarity as to the procedures applicable to UDRP complaints administered by the Center, and more likely than not indicates the Respondent has a strategy of seeking to recover USD 1,000 (or more) from each of a range of trademark owners whose trademarks are incorporated in domain names which are then used for spurious "review" websites in the manner described above. The Panel has no doubt that USD 1,000 will represent valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name. The Panel does not accept the Respondent's case that the use of the word "donation" indicates an entirely voluntary request, which the Complainant does not have to accede to. It seems to the Panel that the Complainant was intended to understand that making such a "donation" would result in the Disputed Domain Name being transferred, whilst if it was not made no transfer would occur.

In response to the Procedural Order, the Respondent submitted the evidence demonstrating its representative wrote to Virgin Enterprises Limited on an unsolicited basis offering to transfer the domain name <reviewvirgin.com> on a free-of-charge basis. Representatives for Virgin Enterprises Limited declined that offer. The Panel notes that the Respondent's email to Virgin Enterprises Limited post-dates the Complainant's Supplemental Filing and so the Panel does not find this is a genuine proposal of transfer. The Panel believes that this is part of a scheme by the Respondent to create evidence to try to rebut the allegations against it which actually reinforces the Panel's finding of the Respondent's bad faith.

It follows that the Respondent's conduct is within paragraph 4(b)(i) of the Policy (see above).

The Panel does not accept that the panel reasoning in *Philip Morris USA Inc. v. Gideon Black*, WIPO Case No. [D2015-0333](#) is applicable to the present case. That decision seems to have been rather fact-specific and involves a single domain name where it was unclear how, if at all, the Respondent intended to use it. The present case involves the Respondent admitting he intends to use the Disputed Domain Name in the same manner as his other domain names which leads to a consideration on the merits or otherwise of such usage (see above).

The Panel also declines to accept that the panel reasoning in *Landmark Lofts Limited v. Anonymousspeech Anonymousspeech*, WIPO Case No. [D2014-1748](#) is applicable to the present case. In that case the Panel declined to accept the Complainant's submissions that the reviews in question were false and concluded that there were free speech considerations applicable to the publication of genuine reviews – there was also no suggestion of a pattern or of a pretextual motivation. That is not the situation in the present case. As a result, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <reviewcarrefour.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: October 17, 2022