

## ADMINISTRATIVE PANEL DECISION

### Carrefour SA v. Zoe Freitas<sup>1</sup> and coumes christophe<sup>2</sup> Case No. D2022-2920

#### 1. The Parties

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

The Respondents are Zoe Freitas, France and coumes christophe, France (hereinafter collectively referred to as the “Respondent”).

#### 2. The Domain Names and Registrars

The disputed domain names <achat-carefour.com>, <achat-carefour.pro>, <achats-carefour.com>, <commandes-carefour.com> and <commandes-carefour.pro> are registered with NameCheap, Inc. (the “First Registrar”). The disputed domain name <commandes-carrefour.com> is registered with NameSilo, LLC (the “Second Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2022. On August 8, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On August 8, 2022, the First Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names <achat-carefour.com>, <achat-carefour.pro>, <achats-carefour.com>, <commandes-carefour.com> and <commandes-carefour.pro> which differed from the named Respondent and contact information in the Complaint. On the same date, the Second Registrar transmitted by email to the Center its verification

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<sup>1</sup> The Complaint against this Respondent was originally filed against “Privacy Service Provided by Withheld for Privacy ehf”, a privacy service found in the publicly available WhoIs details for the disputed domain names <commandes-carefour.pro>, <commandes-carefour.com>, <achat-carefour.pro>, <.achat-carefour.com> and <achats-carefour.com>. The identity of this Respondent was subsequently disclosed by the First Registrar in response to the Center’s request for registrar verification in connection with the aforementioned disputed domain names. The amended Complaint lists the person disclosed by the First Registrar as the first Respondent.

<sup>2</sup> The Complaint against this Respondent was originally filed against “Domain Administrator, See PrivacyGuardian.org”, a privacy service found in the publicly available WhoIs details for the disputed domain name <commandes-carrefour.com>. The identity of this Respondent was subsequently disclosed by the Second Registrar in response to the Center’s request for registrar verification in connection with the aforementioned disputed domain name. The amended Complaint lists the person disclosed by the Second Registrar as the second Respondent.

response disclosing registrant and contact information for the disputed domain name <commandes-carrefour.com> which differed from the named Respondent and contact information in the Complaint. On August 12, 2022, the Center sent an email communication to the Complainant, providing the registrants and contact information disclosed by the Registrars, and inviting the Complainant to amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all domain names are under common control; and/or file a separate complaint for a domain name for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 16, 2022 in which it requested consolidation of Respondents.

On August 17, 2022, the Center applying the principles and preliminary provider assessment stipulated in *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and [WIPO Overview 3.0](#), section 4.11.2 informed the Complainant that there appeared to be at least *prima facie* grounds sufficient to warrant accepting the Complaint for the Panel's final determination of the consolidation request on appointment.

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 Respondents of the Complaint, and the proceedings commenced on August 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on September 27, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter September 30, 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 disputed domain names were initially registered in the name of privacy services. The identity of the Respondents was disclosed by the Registrars in response to the Center's request for registrar verification in connection with the disputed domain names.

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 names <commandes-carrefour.com>, <commandes-carefour.com> and <commandes-carefour.pro> were created on April 4, 2022; the disputed domain names <achat-carefour.com> and <achat-carefour.pro> were created on April 5, 2022; the disputed domain name <achats-carefour.com> was created

on April 6, 2022.

The Complainant has submitted evidence that the disputed domain names resolved to inactive parking pages.

## **5. Parties' Contentions**

### **A. Complainant**

(i) The Complainant submits that the disputed domain names reproduce the Mark, in which the Complainant has rights, and are confusingly similar to the Mark, insofar as the disputed domain names all contain the Mark in its entirety or a misspelling of the Mark (with one "r" missing), preceded by the French words "achats", "achat" or "commandes" (*i.e.* "purchases", "purchase" or "orders" respectively) and a hyphen, 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 names. 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 names in bad faith and alleges that the Respondent had knowledge of the Mark when registering the disputed domain names.

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

(v) The Complainant requests that the disputed domain names 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**

#### **A. Request for Consolidation**

In its amended Complaint, the Complainant requested a consolidation of Respondents.

Under paragraph 3(c) of the UDRP Rules, the Complaint may relate to more than one domain name, so long as the person or entity that is the registrant of the domain names specified in the Complaint is the same.

Pursuant to Article 10(e) of the UDRP Rules, a "Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules".

In this case, it is notable that:

- although they are not all registered with the same Registrar, the disputed domain names were registered in quick succession over a period of three days;
- the disputed domain names share the same registrant's country of residence on the Whois, which is France;

- the disputed domain names are similar to each other beyond the simple fact of containing the Mark, or a misspelling of the Mark, they all combine the Mark or a misspelling of the Mark with generic words in French (“commandes”, “achat” or “achats”);
- even though the disputed domain names are not registered with the same Registrar, the combination of the similarity in their structures as well as their registration over a short period of three days are very unlikely to be a coincidence.

The combination of the above circumstances may indicate that the disputed domain names have been, in fact, registered by the same person or entity and are subject to common control.

After giving due consideration to paragraph 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential [Overview 3.0](#)”), the Panel notes that the Complainant’s above arguments have not been rebutted, that no objection was raised on the ground that consolidation would be detrimental to the interests of the Respondent, and that none of the disputed domain names is actively used.

Accordingly, on the balance of the probabilities and in the interest of procedural efficiency, the Panel decides that all named registrants of the disputed domain names are, in fact, the same entity and/or that all the disputed domain names are under common control, and accepts consolidation as requested by the Complainant.

## **B. 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 names, such as making legitimate noncommercial or fair use of the disputed domain names.

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 names, it is evident that the latter consist of the Mark, or a misspelling of the Mark, preceded by either “achat” (“purchase” in French), “achats” (“purchases” in French) or “commandes” (“orders” in French) and a hyphen, and followed by the generic Top-Level Domains (“gTLDs”) “.com” or “.pro”.

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 “achat”, “achats” or “commandes” before the Mark or a misspelling of the Mark do not dispel the confusing similarity, and that the Mark remains recognizable in the disputed domain names.

The Panel finds that the disputed domain names are 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 names. There is no evidence that the Respondent is known by any of the disputed domain names.

The disputed domain names resolve to inactive parking pages.

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

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 names.

Furthermore, the nature of the disputed domain names, insofar as they are similar to the Mark, carries a high risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [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 names, which has not been rebutted by the Respondent.

## **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 names confusingly similar to the Mark, which can be considered as “cybersquatting”.

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 CARREFOUR element of 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 names randomly with no knowledge of the “carrefour” element 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 activity and the composition of the disputed domain names.

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 names, 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 have an affirmative duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and that contravening that duty may constitute bad faith. 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 names constitute 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 names <achat-carefour.com>, <achat-carefour.pro>, <achats-carefour.com>, <commandes-carefour.com>, <commandes-carefour.pro> and <commandes-carrefour.com> be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: October 13, 2022