

ADMINISTRATIVE PANEL DECISION

Carrefour SA. v. Xavier Mengelle
Case No. D2022-2922

1. The Parties

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

The Respondent is Xavier Mengelle, France.

2. The Domain Name and Registrar

The disputed domain name <carrefoursituationmanage.site> (“Disputed Domain Name”) is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2022. On August 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 9, 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 August 22, 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 August 23, 2022.

On August 22, 2022, the Center sent an email in English and Russian to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on August 23, 2022, referring to the respective arguments contained in the amended Complaint in support of its request. The Respondent did not comment on the language of the proceeding.

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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 22, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on 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 is a worldwide leader in retail, having pioneered the concept of hypermarkets since 1968, providing its retail store services under the trademarks CARREFOUR. The Complainant operates over 12,000 stores in more than 30 countries worldwide, with more than 384,000 employees and 1.3 million daily unique visitors in its stores. The Complainant is listed on the index of the Paris Stock Exchange (CAC 40) and in 2018 had an annual turnaround of EUR 76 billion.

The Complainant owns several hundred trademark registrations worldwide incorporating the trademarks CARREFOUR, including, but not limited to, International Trademark No. 351147, registered on October 2, 1968, for goods in Classes 1 to 34 and International Trademark No. 353849, registered on February 28, 1969, for services in Classes 35 to 42.

The Complainant is also the owner of numerous domain names incorporating the trademarks CARREFOUR, notably the domain name <carrefour.com> has been registered since 1995.

The Complainant's CARREFOUR trademarks have been recognized as well known in many earlier decisions (e.g. *Carrefour SA v. hanib bas*, WIPO Case No. [D2020-1798](#); *Carrefour SA. v. Reliant-web Domain Admin / Jean Marie Grolleau / Joanne Elvert*, WIPO Case No. [D2021-2389](#); *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#)).

The Disputed Domain Name was registered on January 1, 2022. As of the date of this Decision, the Disputed Domain Name is resolving to a parking page of the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First, the Complainant submits that the Complainant is the owner of trademark registrations for CARREFOUR in numerous jurisdictions. The Complainant also submits that its trademarks CARREFOUR enjoy a widespread reputation as stated in a large number of earlier UDRP Panel decisions.

Second, the Complainant asserts that the Disputed Domain Name is confusingly similar to the trademarks CARREFOUR owned by the Complainant since the Disputed Domain Name incorporates the Complainant's trademarks CARREFOUR in its entirety, and the addition of generic terms "situation" and "manage" is insufficient to avoid confusing similarity. Instead, the addition of terms "situation" and "manage" heightens the likelihood of confusion since Internet users can perceive this as a domain name managed or authorized

by the Complainant to offer online support to its customers, which is not the case.

Finally, the Complainant argues that the use of lower-case letter format and the addition of the generic Top-Level Domain (“gTLD”) “.site” should not be taken into account under the first element.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant submits that the Respondent has acquired no trademark incorporating the term CARREFOUR which could have granted the Respondent with rights in the Disputed Domain Name. There is no evidence that the Respondent has been commonly known by the Disputed Domain Name as an individual, business, or other organization.

Second, the Complainant asserts that the Complainant has not authorized, licensed, or permitted the Respondent to use any of its trademarks or to apply for or use terms similar thereto in the Disputed Domain Name in any manner or form.

Third, the Complainant contends that the Disputed Domain Name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate noncommercial fair use.

Finally, the Complainant submits that it has made a *prima facie* case of the Respondent's lack of right or legitimate interest in the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant contends that the Complainant and its trademarks enjoy a long-lasting worldwide reputation, including in France, where the Respondent resides. Thus, the Respondent necessarily had the Complainant's name and its trademarks in mind when registering the Disputed Domain Name. In addition, the Complainant's trademark registrations significantly predate the registration date of the Disputed Domain Name. Accordingly, the Complainant asserts that the Disputed Domain Name was registered in bad faith.

Second, the Complainant submits that it is highly likely that the Respondent chose the Disputed Domain Name because of its identity with or similarity to a trademark in which the Complainant has rights and legitimate interest. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Disputed Domain Name, so such use cannot be considered a good faith use.

Third, the Complainant submits that the Respondent has already been engaged in the registration of abusive domain names (see *Boursorama S.A. v. Xavier Mengelle*, WIPO Case No. [D2022-0609](#)).

Moreover, the Complainant argues that the Disputed Domain Name is used in bad faith as by simply maintaining the Disputed Domain Name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain name. Besides, the Disputed Domain Name resolves to a page which is blocked by the service provider, and therefore, the non-use of a domain name (including a blank or error page) does not prevent a finding of bad faith under the doctrine of passive holding.

With said arguments, 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

A. Procedural issues

(i) The Respondent's Identity

The Panel notes that at the time the Complaint was filed on August 8, 2022, the Respondent was identified as "GDPR Masked". On August 9, 2022, the Registrar revealed the underlying registrant. The Center sent a Notice of Registrant Information to the Complainant on August 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 23, 2022, the Complainant filed an amended Complaint, adding the underlying registrant disclosed by the Registrar.

(ii) Language of the Proceeding

The Complaint was filed in English on August 8, 2022. On August 9, 2022, the Registrar confirmed that the language of the Registration Agreement is Russian. As the Complaint was filed in English, the Center, in its notification dated August 22, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by August 27, 2022.

On August 23, 2022, the Complainant submitted the amended Complaint, which includes a request that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the 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.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, a French business entity, does not appear to be able to communicate in Russian, and therefore, if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the Disputed Domain Name contains English words, *i.e.*, "situation", "manage"; this suggests that the Respondent has knowledge of the English language and will be able to communicate in English.

(iii) the Respondent did not object for English to be the language of the proceeding, and did not submit a Response in either English or Russian. Moreover, the Respondent has already been involved in proceedings in English without raising any objection (*i.e.* *Boursorama S.A. v. Xavier Mengelle*, WIPO Case No. [D2022-0609](#)).

Therefore, for the purpose of easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the

Panel shall ensure that the administrative proceeding take place with due expedition”, the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(iii) The Respondent’s Failure to Respond

The Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent’s default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (1) that it has trademark rights, and, if so, (2) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in and to the CARREFOUR trademarks, which were registered in a number of countries well before the registration of the Disputed Domain Name.

Second, the Panel finds that the Disputed Domain Name incorporates entirely the Complainant’s CARREFOUR trademarks. The difference between the Disputed Domain Name and the trademark is the addition of the terms “situation” and “manage”. In this regard, the Panel finds that the said difference does not prevent a finding of confusing similarity between the Complainant’s trademarks and Disputed Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“Overview3.0”); see also, e.g., *BlackRock, Inc. and BlackRock International Limited v. Besim Huskic*, WIPO Case No. [D2020-2596](#); *OVH v. Mohamed Nagar*, WIPO Case No. [D2021-0903](#); *Supercell Oy v. See Privacy Guardian.org / Mediastack*, WIPO Case No. [D2017-2177](#); *Johnson & Johnson v. Tung Nguyen*, WIPO Case No. [D2017-1635](#).

Third, the Panel finds, similarly to the other UDRP panels, that the addition of the generic Top-Level Domain (“gTLD”) “.site” to the Disputed Domain Name can be disregarded for the purposes of the Policy (see, e.g., *WhatsApp LLC v. Gustavo Ceccato*, WIPO Case No. [D2022-2786](#); *Carrefour SA v. Miftari Jack*, WIPO Case No. [D2022-2359](#); *Carrefour SA v. Dexter Turner*, WIPO Case No. [D2022-2032](#); *Skyscanner Limited v. James Newman*, WIPO Case No. [D2021-4150](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s CARREFOUR trademarks, and the first element of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Names for the purposes of paragraph 4(a)(ii) of the Policy, including:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

Noting the facts and arguments set out above, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant’s contentions and, therefore, did not refute the Complainant’s contentions.

The consensus of previous UDRP panels is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating his rights or legitimate interests in the disputed domain name (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant’s asserted facts, that no license, permission, or authorization of any kind to use the Complainant’s trademarks has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction. Thus, the Panel finds that the Respondent has no rights in the CARREFOUR trademarks.

The Panel finds, according to what the Complainant established and similar to other UDRP panels, that the CARREFOUR trademarks are recognized as well known, including in France, where the Respondent allegedly resides based on the information disclosed by the Registrar (See e.g. *Carrefour SA v. hanib bas*, WIPO Case No. [D2020-1798](#); *Carrefour SA. v. Reliant-web Domain Admin / Jean Marie Grolleau / Joanne Elvert*, WIPO Case No. [D2021-2389](#); *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#); *Carrefour v. rabie nolife*, WIPO Case No. [D2019-0673](#); *Carrefour v. Jane Casares, NA*, WIPO Case No. [D2018-0976](#); *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#); *Carrefour v. Tony Mancini, USDIET Whoisguard, Inc.*, WIPO Case No. [D2015-0962](#); *Carrefour v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2015-0769](#); *Carrefour v. Park KyeongSook*, WIPO Case No. [D2014-1425](#); *Carrefour v. Yujinhua*, WIPO Case No. [D2014-0257](#); *Carrefour v. Karin Krueger*, WIPO Case No. [D2013-2002](#); *Carrefour S.A. v. Patrick Demestre*, WIPO Case No. [D2011-2248](#)).

The Disputed Domain Name resolves to a parking page of the Registrar as of the date of this decision. The Panel also notes that it has been more than 10 months from the registration of the Disputed Domain Name to the date of this decision, so the Respondent has had sufficient time to build its website under the Disputed Domain Name if it has such intention. However, no evidence is available on the Respondent’s preparation to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Hence, in absence of this evidence, the Panel is of the view that paragraph 4(c)(i) is not met.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, by incorporating the Complainant’s distinctive trademark in its entirety within the Disputed Domain Name, the composition of the Disputed Domain Name is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(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 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 your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively in other circumstances.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Names in bad faith. The Respondent did not reply to the Complainant’s contentions and therefore, did not refute the Complainant’s contentions.

The Panel further finds that the Complainant’s CARREFOUR trademarks have been registered in many countries. As mentioned in the section C above, the Panel finds that the trademarks CARREFOUR are well-known, including in France, where the Respondent allegedly resides.

Given the reputation and wide use of the CARREFOUR trademarks by the Complainant, which predated the registration date of the Disputed Domain Name, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, the Panel is of the view that the nature of Disputed Domain Name, incorporating the Complainant’s well-known trademarks plus the terms “situation” and “manage”, indicates itself that the Respondent deliberately selected the Disputed Domain Name. The Panel considers such registration is an attempt by the Respondent to take advantage of the Complainant’s goodwill. See the section 3.2.1 of the [WIPO Overview 3.0](#).

It is further noted that as of the date of this Decision, the Disputed Domain Name has not been used. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of [WIPO Overview 3.0](#)).

In light of this doctrine, the Panel finds that at the time of registration of the Disputed Domain Name, the Complainant had a considerable reputation in the CARREFOUR trademarks in France where the Respondent appears to be located. Hence, the Panel is of the view that the Respondent intentionally chose to register the Disputed Domain Name comprising of the Complainant’s CARREFOUR trademarks and the elements “situation” and “manage”, in order to somehow confuse Internet users that the Disputed Domain Name may have a connection with the Complainant. Further, the Respondent has failed to submit a response and/or to provide any evidence of actual or contemplated good faith use of the Disputed Domain Name. Therefore, the Panel considers that it is implausible for the Respondent to engage in any good faith use of the Disputed Domain Name.

Taking into account all of the above, the Panel finds that the Disputed Domain Name was registered and used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

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 <carrefoursituationmanage.site> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: October 14, 2022