

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. flavia moura, Carrefour
Case No. D2022-2942

1. The Parties

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

The Respondent is flavia moura, Carrefour, Brazil.

2. The Domain Name and Registrar

The Disputed Domain Name <oficialcarrefour.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2022. On August 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 10, 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 (Contact Privacy Inc. Customer 0164764554) (“the Named Respondent”) and contact information in the Complaint. The Registrar explained in its response email that “Contact Privacy” is a privacy service that the Registrar offers to its registrant, and although the name of the Named Respondent is unique, “Contact Privacy” should not be construed as the registrant of the Disputed Domain Name. The Registrar then disclosed the name and contact information of the underlying registrant to the Center, which is flavia moura, Carrefour, of Via de Acesso Norte Km 38, Cajamar, SP, BR 07750-000, Brazil. The Center sent an email communication to the Complainant on August 12, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint to add the underlying registrant as a respondent to the Complaint. The Complainant filed an amended Complaint on August 17, 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 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent of its default in response on September 14, 2022.

The Center appointed Rosita Li as the sole panelist in this matter on September 20, 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.

The Panel notes that Complainant, upon the Registrar's disclosure of the underlying registrant information, chose to replace the Named Respondent with the underlying registrant flavia moura, Carrefour as the respondent in the amended Complaint, and included further facts and arguments in light of the new registrant information. Section 4.4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that a complainant, when provided with underlying registrant information which differs from the respondent named in the original complaint, "may either add the disclosed underlying registrant as a co-respondent, or replace the originally named privacy or proxy service with the disclosed underlying registrant. In either event, complainants may also amend or supplement certain substantive aspects of the complaint (notably the second and third elements) in function of any such disclosure". UDRP panels retain their discretion to determine the respondent against which the case should proceed ([WIPO Overview 3.0](#), Section 4.4.5.).

In the present case, the Panel determines that it should proceed solely against the underlying registrant, flavia moura, Carrefour, since it is the actual holder of the Disputed Domain Name registration against which the Complaint was initiated and there is no evidence that the privacy or proxy provider is related to him.

4. Factual Background

The Complainant, based in France, is a retail group operating hypermarkets worldwide.

The Complainant submits that it has more than 384,000 employees worldwide and 1.3 million daily unique visitors in its stores. The Complainant submits that it is a well-known worldwide leader in retail and operates more than 12,000 stores in more than 30 countries worldwide.

The Complainant is the owner of numerous trade marks for or incorporating the term "carrefour", including:

- International trade mark no. 351147 for CARREFOUR, registered on October 2, 1968, duly renewed, and designating goods in international classes 1 to 34;
- International trade mark no. 353849 for CARREFOUR, registered on February 28, 1969, duly renewed, and designating services in international classes 35 to 42; and
- European Union trade mark no. 5178371 for CARREFOUR, registered on August 30, 2007, duly renewed, and designating goods and/or services in international classes 9, 35, and 38.

The Complainant is also the owner of the domain names <carrefour.com>, registered since October 25, 1995, and <carrefour.com.br>, registered since January 18, 1997.

The Disputed Domain Name was registered on July 8, 2022. It resolves to an error page.

5. Parties' Contentions

A. Complainant

The Complainant submitted that the three elements set out under paragraph 4(a) of the Policy in relation to domain name dispute have been satisfied. A summary of the Complainant's submissions are as follows.

The Complainant contends that the Disputed Domain Name, which incorporates the earlier well-known CARREFOUR trade mark in its entirety together with the term "oficial" (*i.e.* the Spanish and Portuguese translation for "official"), is confusingly similar to the CARREFOUR trade marks. The Complainant contends that the addition of generic terms such as "oficial" does not preclude the confusing similarity between the Disputed Domain Name and the Complainant's CARREFOUR trade marks given that the CARREFOUR trade marks are immediately recognizable within the Disputed Domain Name, but rather, the addition of the word "oficial" heightens the likelihood of confusion as users may be misled to perceive the Disputed Domain Name as a legitimate domain name employed by the Complainant for its Spanish consumers. Further, the Complainant submits that the use of lower-case letters in the Disputed Domain Name and the addition of the Top-Level Domain ".com" are not significant in determining whether the Disputed Domain Name is identical or confusingly similar to the Complainant's CARREFOUR trade marks.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant submits that it has not given any license or authorization to the Respondent to use the CARREFOUR trade marks. The Complainant further submits that the Respondent owns no trade mark in the term CARREFOUR which granted them rights in the Disputed Domain Name, nor was there any evidence that the Respondent was commonly known by the Disputed Domain Name. The Complainant also pointed out that the Disputed Domain Name resolves to an error page and is not being used in connection with a *bona fide* offering of goods or services. The Complainant submits that in light of the worldwide renown of the CARREFOUR Marks and the fact that the Disputed Domain Name is inherently likely to mislead Internet users, there could be no plausible legitimate noncommercial or fair use of the Disputed Domain Name.

The Complainant submits that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Complainant submits that the Respondent's choice of the Disputed Domain Name could not have been accidental and was influenced by the reputation of the Complainant and its earlier well-known CARREFOUR trade marks. The Complainant contends that the Disputed Domain Name was chosen with the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Disputed Domain Name. The Complainant contends that its CARREFOUR trade marks were registered significantly earlier than the Disputed Domain Name and a quick trade mark search or search engine query would have revealed to the Respondent the existence of the Complainant and the CARREFOUR trade marks. The Complainant suggests that the Respondent knew or should have known of the Complainant's earlier rights, and was in violation of such rights in acquiring and using the Disputed Domain Name. Further, the Complainant submits that the Respondent in simply maintaining but not using the Disputed Domain Name (*i.e.* it resolving to an error page) shows bad faith as it prevents the Complainant from reflecting its trade marks in the corresponding domain name. The Complainant further submits that the Respondent's use of a privacy protection service in attempts to conceal its identity is additional evidence that the Disputed Domain Name was registered in bad faith. Finally, given the long-lasting international relationship of the Complainant and its CARREFOUR trade marks, the Complainant submits that it cannot perceive any future use of the Disputed Domain Name by the Respondent in good faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to section 1.11 of the [WIPO Overview 3.0](#), generic Top-Level Domains such as “.com” in a disputed domain name do not typically form part of the relevant assessment in the test of confusing similarity. The Panel will accordingly consider the second level part of the Disputed Domain Name (*i.e.* “officialcarrefour”).

The Complainant demonstrated that it is the proprietor of the CARREFOUR trade marks, and that the CARREFOUR Marks were registered significantly earlier than the Disputed Domain Name.

According to section 1.7 of the [WIPO Overview 3.0](#), “where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark”. Further, section 1.8 of the [WIPO Overview 3.0](#) provides that, “where the relevant trademark 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 Disputed Domain Name incorporates the CARREFOUR trade mark in its entirety. The additional word “official” before CARREFOUR, be it a misspelling of the English word “official” or the Spanish/ Portuguese translation for “official”, does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s CARREFOUR trade marks.

Accordingly, the Panel is of the view that the Disputed Domain Name is confusingly similar to the Complainant’s CARREFOUR Marks and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

According to section 2.1 of the [WIPO Overview 3.0](#), “where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Panel accepts the Complainant’s submissions that the Respondent does not appear to be commonly known by the Disputed Domain Name, has not used or made preparations to use the Disputed Domain Name (as it resolves to an error page), and is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

The Panel notes that the Complainant did not license or authorize the Respondent to use the CARREFOUR trade marks or its other trade marks with similar “carrefour” terms in the Disputed Domain Name in any manner or form. The Disputed Domain Name’s resolution to an error page does not serve as evidence of any use or preparation for use of the Disputed Domain Name in relation to a *bona fide* offering of goods or services by the Respondent.

In the present case, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests.

The Panel notes that the Respondent has failed to provide any evidence or submit any arguments to demonstrate that it had any rights or legitimate interests in the Disputed Domain Name. Considering the circumstances of the case, the Respondent's current passive holding of the Disputed Domain Name does not serve as an indicator of the Respondent's rights or legitimate interests in the domain name. Moreover, given the composition of the Disputed Domain Name, the Panel finds that there is a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel is of the view that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have "consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".

The Panel finds that at the time of registration of the Disputed Domain Name in 2022, the Complainant already had its trade marks for or incorporating the "carrefour" term registered in various parts of the world, including Brazil, where the Respondent is located. The Panel agrees that the Complainant's CARREFOUR trade marks are well known and reputable amongst the general public. The Panel agrees that the Complainant's well-known reputation has been considered and acknowledged by earlier UDRP decisions as provided by the Complainant to the Panel in its submissions.

Considering the reputation of the Complainant and its trade marks, it would not be plausible for the Respondent to claim that they were unaware of the Complainant's CARREFOUR trade marks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's CARREFOUR Marks ([WIPO Overview 3.0](#), section 3.2.2). Accordingly, the Panel finds that the Respondent registering a domain name confusingly similar to the Complainant's earlier well-known CARRFOUR trade marks is a clear indicator of bad faith.

Moreover, factors such as a domain name incorporating a trade mark in its entirety with an additional descriptive term, and a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name are all indicators of bad faith (section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel accordingly considers its findings in the above sections 6.A. and 6.B., coupled with the fact that the Respondent failed to explain its choice of the Disputed Domain Name to be indicators of the Respondent's bad faith.

It is noted by the Panel that the Respondent holds the Disputed Domain Name passively, in that the Disputed Domain Name resolves to an error page without any substantive content.

According to section 3.3 of the [WIPO Overview 3.0](#), the non-use of a domain name (including an error page) would not preclude a finding of bad faith. Factors that have been considered by UDRP panels for the passive holding doctrine include: "(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".

As mentioned above, the CARREFOUR trade marks of the Complainant are distinctive and widely-known. Yet, the Respondent has failed to provide a response or evidence of actual or contemplated use of the Disputed Domain Name in good faith. Further, the Panel observes that the Respondent attempted to

conceal its identity using a proxy service. The Panel is of the view that the Respondent's use of a proxy service and provision of false contact information are indicators of bad faith. Considering the above, the Panel finds it implausible that there could be any good faith use of the Disputed Domain Name.

In view of the foregoing, the Panel is of the view that paragraph 4(a)(iii) of the Policy has been satisfied.

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, <oficialcarrefour.com>, be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: October 4, 2022