

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Dexter Turner
Case No. D2022-2954

1. The Parties

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

The Respondent is Dexter Turner, Australia.

2. The Domain Name and Registrar

The disputed domain name <carrefourfinancehome.site> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 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 15, 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 18, 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 18, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 13, 2022.

The Center appointed Selma Ünlü as the sole panelist in this matter on September 14, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a multinational retail company headquartered in France, devoted to the operation of hypermarkets and additionally offers travel, banking, insurance and ticketing services.

The Complainant is the owner of several trademarks for CARREFOUR including in France where the Respondent appears to be based. The Complainant's CARREFOUR trademarks include the following:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968.
- International trademark CARREFOUR No. 353849, registered on February 28, 1969.
- European Union trademark CARREFOUR No. 5178371, registered on August 30, 2007.

The Complainant is also the owner of several domain names incorporating its CARREFOUR trademark, such as <carrefour.com> and <carrefourfinance.be>.

The disputed domain name was registered on June 1, 2022. The disputed domain name resolves to an error page and is currently not in use.

5. Parties' Contentions

A. Complainant

The Complainant states that it is the owner of the CARREFOUR trademarks, which are well known worldwide. The disputed domain name is confusingly similar to the Complainant's trademarks, because it incorporates in its entirety the CARREFOUR trademark together with the terms "finance" and "home". The Complainant contends that the addition of generic terms, such as "finance" and "home", to a trademark in a domain name does not diminish the likelihood of confusion according to the established case law and referred to the cases of *Carrefour SA v. Karel de Blijker*, WIPO Case No. [D2021-3683](#) and *Carrefour v. Contact Privacy Inc. Customer 0153830825 / Milen Radumilo*, WIPO Case No. [D2019-1591](#). In addition, the Complainant asserts that the Complainant's business activity covers also financial services and therefore, the addition of the term "finance" can only further mislead consumers into believing that the disputed domain name is somehow authorized, approved or managed by Complainant, even heightening the risk of confusion. It is also noted that the earlier CARREFOUR trademarks of the Complainant are immediately recognizable within the disputed domain name and the addition of the Top Level Domain ".site" is not significant in determining whether the disputed domain name is identical or confusingly similar to the trademarks of the Complainant.

The Complainant contends that the Respondent has no legitimate rights or interests in the disputed domain name, since it has no trademark or any right over the CARREFOUR signs and that the Complainant did not authorize the Respondent to use its trademarks, or gave any license to the Respondent. The Complainant claims that the disputed domain name is likely to mislead Internet users, and there is no evidence that the Respondent has been making a legitimate noncommercial or fair use of the disputed domain name. In addition, in light of the worldwide renown of the Complainant's trademarks, the Complainant sees no plausible use of the domain that would be legitimate fair and noncommercial. Besides, the Complainant puts forth that the Respondent has not, before the original filing of the Complaint, used or made preparations to

use the disputed domain name in relation to a *bona fide* offering of goods or services. In fact, the disputed domain name resolves to an error page.

Regarding bad faith, the Complainant submits that the Complainant and its trademarks were so widely well known and predated, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights. Therefore, the Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. Also, the Complainant states that the Respondent has already targeted the Complainant in the past with the abusive registration of the domain name <icarrefoure-pass.site> (*Carrefour SA v. Dexter Turner*, WIPO Case No. [D2022-2032](#)), where the Panel has established that the Respondent acted in bad faith and ordered the transfer of the disputed domain name to the Complainant. The Complainant further contends that the current use of the disputed domain name may not be considered a good faith use. By simply maintaining the disputed domain name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain name. In addition, the disputed domain name resolves to an error page. 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.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove that the three elements of paragraph 4(a) of the Policy have been met for the disputed domain name, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Since the Respondent did not object to any of the contentions from the Complainant by not submitting a Response, the Panel will decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the explanations and evidence provided by the Complainant, the Panel is satisfied that the Complainant has valid trademark rights in the CARREFOUR trademark, which is reproduced in its entirety in the disputed domain name.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (such as descriptive, geographical, meaningless words, or other), in this case the words "finance" and "home", would not prevent the confusing similarity under the first requirement, as the disputed domain name includes the trademark in its entirety; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Furthermore, the addition of the generic Top Level Domain ("gTLD") ".site" does not prevent a finding of confusing similarity, since it is merely a technical registration requirement to be disregarded typically.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists non-exhaustively the relevant circumstances that could show the Respondent's rights or legitimate interests in a domain name, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] 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] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] 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 Panel notes that the Respondent has not filed a Response, and therefore, neither denied the Complainant's claims, nor brought any information or evidence to prove any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. In particular, the Complainant asserted that the Respondent has no trademarks with the word "carrefour" and that it did not provide any license or authorization for the Respondent to use its trademark as part of the disputed domain name.

The Complainant states that the disputed domain name is likely to mislead Internet users, and in light of the Complainant's trademarks being well known worldwide, there is no evidence that the Respondent has been making a legitimate noncommercial or fair use of the disputed domain name. The Complainant further states that the Respondent is not known under the disputed domain name, and does not make any *bona fide* use – in fact the disputed domain name is not in use. Additionally, the Complainant's registration and use of the CARREFOUR trademark predates the registration of the disputed domain name. Since the Complainant made out a *prima facie* case, the burden of production shifts to the Respondent to establish its rights or interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case.

Moreover, the Panel finds that the composition of the disputed domain name, consisting of the Complainant's trademark entirely, carries a risk of implied affiliation. This finding is reinforced given the Complainant's use of the domain name <carrefourfinance.be>. See section 2.5.1 of the [WIPO Overview 3.0](#).

In light of the Complainant's assertions and evidence, the Panel finds that the Complainant has met the requirement under the Policy of *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain relevant non-exhaustive circumstances, which can be considered as the registration and use of a domain name in bad faith, namely:

"(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location."

Given the explanations in the Complaint and the evidence provided by the Complainant, the Panel finds that the disputed domain name was registered in bad faith.

The disputed domain name incorporates the exact distinctive CARREFOUR trademark of the Complainant, which cannot be considered as a coincidence. The Complainant has provided that the CARREFOUR trademark is well known, therefore, the fact that the Respondent decided to register the disputed domain name including this term in its entirety strongly suggests that the Respondent taken the Complainant's well-known CARREFOUR trademark into account and targeted it specifically in order to gain unfair advantage. This is even more likely given the fact that the disputed domain name was registered relatively recently and many years after the registration of the Complainant's CARREFOUR trademark, as well as the Complainant's registration and use of the <carrefourfinance.be> domain name.

Moreover, as the Complainant pointed out in the Complaint, the Respondent has already targeted Complainant in the past with the abusive registration of the domain name <icarrefoure-pass.site> (in *Carrefour SA v. Dexter Turner*, WIPO Case No. [D2022-2032](#)), where the Panel decided that the Respondent acted in bad faith and ordered the transfer of the disputed domain name to the Complainant. The Panel is of the opinion that this is enough to establish a beginning of a pattern of abusive domain name registrations by the Respondent. This further supports the Panel's finding that the disputed domain name was registered and is used in bad faith.

It is also noted by the Panel that the disputed domain name is not being actively used by the Respondent, and it resolves to an error page.

It is also formerly decided by UDRP panels that, comparing to the list in paragraph 4(b) of the UDRP for bad faith registration and use, the lack of active use (e.g., to resolve to an error website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith (*Carrefour SA. v. isco diaz*, WIPO Case No. [D2021-2639](#)).

The Panel must decide by examining all relevant circumstances of each case in question. It is possible that cumulative conditions lead to the finding of bad faith, such as the Complainant's trademark being well known, as well as no response to the Complaint and. The concept of passive holding is stated in [WIPO Overview 3.0](#), section 3.3, where there is a consensus view:

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying 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.”

See also, *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#):

“Respondent knew or should have known that the Domain Name included Complainant’s CREDIT MUTUEL well-known trademark. [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that Respondent undeveloped use of the website at the Domain Name which incorporates Complainant’s trademark in its entirety indicates that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per paragraph 4(b)(iv) of the Policy.”

The Panel further finds that passive holding of the disputed domain name in this case constitutes bad faith. Consequently, the Panel decides that the third requirement is also met and both the registration and the use of the disputed domain name are in bad faith.

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, <carrefourfinancehome.site>, be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: September 28, 2022