

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Martine Rouxe
Case No. D2022-4258

1. The Parties

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

The Respondent is Martine Rouxe, France.

2. The Domain Name and Registrar

The disputed domain name <securicarrefourtement-fr.site> is registered with EuroDNS S.A. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 November 14, 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 November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed Alexandre Nappey as the sole panelist in this matter on December 9, 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 the French company Carrefour SA, a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. With a turnaround of EUR 76 billion in 2018, the Complainant is listed on the index of the Paris Stock Exchange (CAC 40). The Complainant operates more than 12,000 stores in more than 30 countries worldwide. With more than 384,000 employees worldwide and 1.3 million daily unique visitors in its stores, the Complainant is a major and well-known worldwide leader in retail. The Complainant additionally offers travel, banking, insurance or ticketing services.

The Complainant owns numerous CARREFOUR trademark registrations around the world, among which:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 1 to 34;
- International trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42.

The disputed domain name <sequirecarrefourtement-fr.site> was registered on August 1, 2022.

At the time of filing the Complaint and drafting of the decision, the disputed domain name is not active.

5. Parties' Contentions

A. Complainant

First, the Complainant submits that the disputed domain name is highly similar to its earlier well-known trademark CARREFOUR to the point of creating confusion.

Indeed, the disputed domain name includes "carrefor", similar to the earlier trademark CARREFOUR. The disputed domain name includes the term "sequire" which the Complainant understands as a typo for the generic term "secure", and the French term "fortement" (strongly, heavily). The terms "carrefor" and "fortement" are merged in the disputed domain name. The Complainant submits that the CARREFOUR trademark is highly recognizable in the disputed domain name. The Internet user of average attention would very likely believe that the disputed domain name originates from the Complainant or is endorsed or sponsored by it for its business.

Secondly, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name:

- the Complainant performed searches and found no CARREFOUR trademark owned by any other person than the Complainant. From this finding, the Complainant asserts that the Respondent has acquired no trademark in the name CARREFOUR which could have granted the Respondent rights in the disputed domain name.
- the Complainant has found no evidence whatsoever that the Respondent is known by 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.
- the Respondent imitates the Complainant's earlier registered trademark CARREFOUR in the disputed domain name without any license or authorization from the Complainant, which is a strong evidence of the lack of rights or legitimate interests. The Complainant submits that it has not authorized the use of the term "carrefour" or any similar terms in registering the disputed domain name.

- the Complainant puts forth that the Respondent has not, before the original filing of the Complaint, used or made preparation to use the disputed domain name in relation to a *bona fide* offering of goods or services.

- On the contrary, the disputed domain name resolves to a blank page. Since the adoption and extensive use by the Complainant of the trademark CARREFOUR predates the registration of the disputed domain name, the burden is on the Respondent to produce evidence to show that the Respondent has rights or legitimate interests in the disputed domain name.

Thirdly, the Complainant submit that the Respondent has registered and is using the disputed domain name in bad faith:

- the Complainant submits that the Complainant and its trademarks were already widely known at the time of registration of the disputed domain name, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights in CARREFOUR. The Complainant submits that it is very likely that the Respondent chose the disputed domain name because of its identity with a trademark in which the Complainant has rights and legitimate interests. 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 Respondent's site. Such a domain name does not provide a right or legitimate interest under the Policy. The Complainant thus states that the Respondent acquired and is using the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks.

- the Complainant's CARREFOUR trademark registrations significantly predate the registration date of the disputed domain name.

- the current use of the disputed domain name may not be considered a good faith use. By maintaining the disputed domain name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain name.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the lack of a formal response from the Respondent, it remains up to the Complainant to make out its case in accordance with paragraph 4(a) of the Policy, and to demonstrate that:

- (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.

However, under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate."

Having consideration to the Parties' contentions, the Policy, Rules, Supplemental Rules, and applicable substantive law, the Panel's findings on each of the above-mentioned elements are the following:

A. Identical or Confusingly Similar

The Complainant has submitted sufficient evidence that it is the holder of numerous CARREFOUR trademarks, which are duly registered before the competent trademark authorities prior to the disputed domain name.

It is well established that the threshold test for confusing similarity under the UDRP involves a reasoned but relatively straightforward comparison between the textual components of the relevant trademark and the disputed domain name. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Further, 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 (see section 1.8 of the [WIPO Overview 3.0](#)).

After performing a visual comparison of the disputed domain name with the Complainant’s CARREFOUR trademarks, it appears to this Panel that the disputed domain name imitates the CARREFOUR trademark, differing only by one missing letter (“u”). Nevertheless, the Complainant’s CARREFOUR trademarks remain recognizable in the disputed domain name, and the addition of other terms does not prevent a finding of confusing similarity.

Regarding the generic Top-Level Domain (“gTLD”), “.site” in the disputed domain name, as a standard registration requirement, it may generally be disregarded under the confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

The Panel finds that the Complainant has satisfied the requirement set forth in paragraph 4(a)(i) of the Policy, *i.e.* has proven that the disputed domain name is confusingly similar to its registered trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of circumstances in which the respondent may establish rights or legitimate interests in the domain name, by demonstrating any of the following:

- (i) before any notice to it 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) that the respondent has been commonly known by the domain name, even if it 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.

It is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant in this proceeding has demonstrated trademark rights and a lack of authorization to use the Complainant’s marks in the disputed domain name or evident rights or legitimate interests on the part of the Respondent. Further, the Respondent is not commonly known by the disputed domain name, and the disputed domain name is not active. Therefore, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not claimed relevant trademark rights or advanced other relevant rights or legitimate interests in the disputed domain name.

The Panel concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the complainant shall prove that the disputed domain name has been registered and is being used in bad faith.

Thus, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 its 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 the respondent's website or location or of a product or service on the respondent's website or location.

First, the Panel finds that the Complainant's trademarks were registered long before the Respondent registered the disputed domain name.

Then, according to the Panel, the Complainant has shown that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's mark, especially given the fact that the CARREFOUR trademarks are well known in France, the country in which the Respondent is located.

The Panel therefore finds that the Respondent registered the disputed domain name in bad faith.

Then, and in light of the evidence provided by the Complainant, the Panel finds that the disputed domain name is not used but wishes to remind that such "passive holding" does not prevent a finding of bad faith, since according to prior UDRP panel decisions, the panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith (see section 3.3 of the [WIPO Overview 3.0](#) and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Indeed, the Panel considers the passive holding of the disputed domain name proves that the Respondent acts in bad faith. The particular circumstances of this case which lead to this conclusion are:

- the Complainant's trademark has a strong reputation and is well known;
- the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- the Respondent has not provided any answer to the Complainant's contentions;
- the Respondent has provided false contact details to register the disputed domain name as the

Center's Written Notice could not be delivered to the Respondent by courier.

Taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated use of the disputed domain name by the Respondent that would not be illegitimate, such as by being an infringement of the Complainant's trademark rights.

The Panel considers that the disputed domain name is being used in bad faith.

Therefore, in view of all the circumstances of this case, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith according to the Policy, paragraph 4(a)(iii).

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 <seuirecarrefourtement-fr.site> be transferred to the Complainant.

/Alexandre Nappey/

Alexandre Nappey

Sole Panelist

Date: January 23, 2023