

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Hartzog BCharlie
Case No. D2022-4275

1. The Parties

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

The Respondent is Hartzog BCharlie, China.

2. The Domain Names and Registrar

The disputed domain names <tw-careefour.online> and <tw-careefour.xyz> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on December 27, 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 global retail enterprise with stores in various countries around the world (Annexes 8 and 11 to the Complaint).

The Complainant owns numerous trademark registrations for the mark CARREFOUR, *inter alia*:

- International Registration No 351147, registered October 2, 1968, FR basic registration, designated for Benelux, Spain, Italy and Monaco, in the classes 1 - 34;
- International Registration No 353849, registered February 28, 1969, FR basic registration, designated for Benelux, Czech Republic, Spain, Croatia, Hungary, Italy, Lichtenstein, Estonia, Latvia, Lithuania, Morocco, Monaco, Montserrat, Macedonia, Serbia, Slovenia, Slovakia, San Marino, in the classes 35 – 42 (Annexes 3, 4 and 5 to the Complaint).

The Complainant's company name is "CARREFOUR, SA" and the Complainant owns the domain name <carrefour.com> since October 25, 1995, resolving to its company website (Annex 9 to the Complaint).

The Respondent registered the disputed domain names on July 21, 2022 (Annex 1 to the Complaint).

The disputed domain names currently resolve to error pages (Annex 13 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. It is listed on the index of the Paris Stock Exchange and 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. To that effect, the Complainant owns several trademark rights worldwide containing the mark CARREFOUR which were registered well before the registration of the disputed domain names.

In addition, the Complainant is also the owner of numerous domain names containing the mark CARREFOUR, both within generic and country code top-level domains, e.g. <carrefour.com> which has been registered since 1995.

The disputed domain names are confusingly similar to the Complainant's trademark rights in CARREFOUR. The disputed domain names only add the two-letter-code "tw" as suffix and substitute one "r" with an additional "e"; this cannot prevent a finding of confusing similarity under the Policy. Also the addition of the generic top-level domains ("gTLDs") ".xyz" and ".online" must be disregarded when evaluating the confusing similarity of the disputed domain names.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. There is no evidence that the Respondent has been commonly known by the disputed domain names as an individual, business, or other organization or that it made preparations to use the disputed domain names in relation to a *bona fide* offering of goods or service and the Complainant has not authorized the use of the terms CARREFOUR or terms similar thereto in the disputed domain names in any manner or form.

Finally, the disputed domain names were registered and are being used in bad faith. The Complainant and its trademarks are well-known around the world so it is inconceivable that the Respondent did not have the Complainant's name and trademark in mind when registering the disputed domain names. The Respondent's choice of the disputed domain names cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 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

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark CARREFOUR.

The disputed domain names <tw-careefour.xyz> and <tw-careefour.online> are confusingly similar to the Complainant's registered trademark CARREFOUR since they only add the two-letter-code "tw" with a hyphen as suffix and substitute one "r" with an additional "e".

It has long been established under UDRP decisions that where the relevant trademark or company name is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)"). Furthermore, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see section 1.9 of the [WIPO Overview 3.0](#)). This is the case at present.

Finally, it has also long been held that gTLDs are generally disregarded when evaluating the confusing similarity of a disputed domain name.

Hence, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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

(see section 2.1 of the [WIPO Overview 3.0](#)). Here, 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.

Furthermore, the nature of the disputed domain names, comprising the Complainant's distinctive mark in an obvious misspelling manner and only add the two-letter-code "tw" as suffix further suggest lack of rights or legitimate interests.

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark CARREFOUR in a domain name or in any other manner as well as the fact that the Respondent has not rebutted these allegations, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain names were registered by the Respondent in bad faith, and
- the disputed domain names are being used by the Respondent in bad faith.

(a) In the present case the Complainant has rights and is the owner of the registered trademark CARREFOUR, which is registered and used in many jurisdictions, long before the registration of the disputed domain names. Moreover, the Complainant registered the domain name <carrefour.com> in 1995 and is using this domain name for addressing its company website.

It is inconceivable for this Panel that the Respondent registered the disputed domain names without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names consist of an obvious misspelling of the Complainant's trademark and company name CARREFOUR ("careefour" instead of "carrefour") together with the two-letter-code "tw" as suffix. In fact, the use of the country-code "tw" for Taiwan rather strengthen the impression that the disputed domain names are in some way connected to the Complainant.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

(b) Although the disputed domain names currently resolve to an error webpage and there is no evidence that the disputed domain names were being actively used, it has long been established under UDRP decisions that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel also concludes bad faith use, putting emphasis on the following:

- the Complainant's trademark and company name CARREFOUR is distinctive and well-known in the retail sector;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain names;

- the disputed domain names incorporate the Complainant's trademark in an obvious misspelling manner together with the prefix "tw" which is the standard defining code for Taiwan; this is suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

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 <tw-careefour.online> and <tw-careefour.xyz> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: January 10, 2023