

ADMINISTRATIVE PANEL DECISION

CARREFOUR SA v. xiansheng chen

Case No. D2022-4865

1. The Parties

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

The Respondent is xiansheng chen, Singapore.

2. The Domain Name and Registrar

The disputed domain name <carrefourjeunesse.com> 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 December 19, 2022. On December 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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 December 23, 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 January 5, 2023.

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 January 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on February 10, 2023. 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 retail company, which operates in more than 30 countries and pioneered the concept of hypermarket back in 1963.

The Complainant owns numerous trademark registrations in different regions of the world for the brand CARREFOUR, such as the International registration No. 351147, registered on October 2, 1968; and the International registration No. 353849, registered on February 28, 1969.

In addition, the Complainant also owns several domain names reflecting its trademark CARREFOUR, including <carrefour.com> (registered on October 25, 1995).

The Respondent registered the disputed domain name on November 17, 2022.

The Panel accessed the disputed domain name on February 20, 2023, when it was not linked to any active website¹. The Complainant brought evidence that the disputed domain name was recently pointing to a website displaying a range of industrial-type products, with non-functional links, and providing contact data that appeared to be incorrect.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is confusingly similar to the Complainant's trademark CARREFOUR. The Complainant owns several hundred trademark worldwide protecting the term "Carrefour". The Complainant's trademark enjoys wide-spread, continuous reputation, evidenced by a list of previous UDRP panels decisions holding that the Complainant and its trademark are widely well-known. The disputed domain name entirely incorporates the Complainant's earlier trademark CARREFOUR, with the addition of the French common word "jeunesse" (in English: "youth"). The Complainant's trademark is placed at the beginning of the disputed domain name and is easily recognizable. Internet users will focus their attention on the trademark of the Complainant and discard the word "jeunesse". In any case, considering the whole expression, Internet users would still come to understand, for example, that the disputed domain name aims to communicate about the actions of the Complainant towards youth or designates children's products offered by the Complainant, such as toys. Regardless, it is established case law that the addition of a term to a well-known trademark in a domain name does nothing to diminish the likelihood of confusion arising from that domain name. The use of the lower-case letter format, on the one hand, and the addition of the Top-Level Domain ("TLD") ".com", on the other hand, are not significant in determining whether the disputed domain name is identical or confusingly similar to the earlier trademark of the Complainant.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. At the time of filing of this Complaint, the Complainant is unable to identify the Respondent. Nonetheless, the Complainant performed searches based on the combination of the trademark CARREFOUR of the Complainant and the term "jeunesse" for a holder based in Singapore but found no results corresponding to

¹ Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8, "[n]oting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision... This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name...".

the disputed domain name. Further to the disclosure of the Respondent information by the Center, the Complainant performed an additional search based on the identity of the Respondent “xiansheng chen”, to no avail. From this finding, the Complainant asserts that the Respondent has acquired no trademark in the terms “carrefour” or “jeunesse” which could have granted the Respondent rights in the disputed domain name. Furthermore, the Complainant has not found evidence that the Respondent is commonly known by the disputed domain name, whether as an individual, a business, or an organization. The Respondent reproduces the Complainant’s trademark in the disputed domain name without any license or authorization from the Complainant, which is strong evidence of the lack of rights or legitimate interest. 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. The disputed domain name points to a webpage that does not reflect any legitimate activity: the links do not function and the information indicated to contact the Respondent does not appear to be correct. Furthermore, a tool-generated translation shows that the web page displays a range of industrial-type products that appear unrelated to one another. The Complainant submits that this web page was randomly generated and does not correspond to any real activity. The disputed domain name is inherently likely to mislead Internet users, and there is no evidence that the Respondent has been making legitimate, noncommercial, or fair use of the disputed domain name. In addition, in light of the worldwide renown of the Complainant’s trademark, the Complainant sees no plausible use of the disputed domain name that would be legitimate, fair, and noncommercial. Since the Complainant registered and extensively used its trademark long before the registration of the disputed domain name, the burden is on the Respondent to establish the Respondent’s rights or legitimate interests the Respondent may have or have had in the disputed domain name. The Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, in line with the Policy. None of the circumstances which set out how a Respondent can prove rights or legitimate interests in a domain name are present in the case at hand.

- The disputed domain name was registered and is being used in bad faith. The Complainant and its trademark were so widely well-known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. It is highly likely that the Respondent chose the disputed domain name because of its identity with or similarity to the trademark of the Complainant. 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 website. A quick trademark search would have revealed to the Respondent the existence of the Complainant and its trademark. The Respondent’s failure to do so is a contributory factor to its bad faith. Furthermore, all search results for the term “carrefour” on online search engines relate to the Complainant. The current use of the disputed domain name may not be considered a good faith. The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant, or to attempt to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant’s trademark 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 long-lasting and well-known relationship between the Complainant and its trademark, the Complainant cannot think of any future use of the disputed domain name that may be done by the Respondent in good faith. The relevant issue is not limited to whether the registrant is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the registrant is acting in bad faith. The combination of all the elements listed and detailed above unequivocally show that the Respondent has acted in bad faith when registering the disputed domain name, in line with the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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.

A. Identical or Confusingly Similar

The Panel has no doubt that “carrefour” is a term directly connected with the Complainant’s trademark.

Annexes 3, 4, and 5 to the Complaint show numerous trademark registrations for CARREFOUR.

The disputed domain name incorporates the Complainant’s trademark CARREFOUR, with the addition of the French dictionary word “jeunesse” (which corresponds to “youth” in English). The disputed domain name also presents the generic TLD extension “.com”.

Previous UDRP decisions have found that the mere addition of terms (such as “jeunesse”) to a trademark in a domain name do not avoid a finding of confusing similarity. This has been held in many UDRP cases (see, e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Question, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, and the cases cited therein)

It is also already well established that the addition of a generic TLD extension such as “.com” is typically irrelevant when determining whether a domain name is confusingly similar to a complainant’s trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, and that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; 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 at issue.

Based on the Respondent’s default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel notes that the present record provides no evidence to demonstrate the Respondent’s intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name is currently not linked to any active website and previously resolved to a website displaying a range of industrial-type products, with non-functional and random links, and providing contact data that appeared to be incorrect, giving the impression that the website was automatically generated as a pretext for attracting Internet traffic via the use of the Complainant’s famous

trademark within the disputed domain name.

The Complainant has not licensed or authorized the use of its trademark to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name. Actually, the Respondent has not indicated any reason to justify why it has chosen the specific term “carrefourjeunesse” to compose the disputed domain name, including the worldwide famous brand CARREFOUR. Given the Complainant’s French origin and primary operations in France, 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. [WIPO Overview 3.0](#), section 2.5.1.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in 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 registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent (in 2022), the trademark CARREFOUR was already well-known worldwide and directly connected to the Complainant’s retail services.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent – at the time of the registration of the disputed domain name – could not have been aware of the Complainant’s trademark, as well as that the adoption of the expression “carrefourjeunesse” could be a mere coincidence.

According to the [WIPO Overview 3.0](#), section 3.1.4, 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.

Actually, the Panel considers that in the present case the addition to the Complainant’s trademark of descriptive term “jeunesse” may even enhance the risk of confusion, suggesting that the disputed domain name refers to an online store of the Complainant focusing on the youth.

From the Panel’s search, the disputed domain name does not currently resolve to any active website.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The non-collaborative posture of the Respondent, *i.e.*, (a) not presently using the disputed domain name, (b) not indicating any intention to use it, and (c) not at least providing justifications for the use of a famous third party trademark, certainly cannot be used in benefit of the Respondent in this Panel's opinion, which circumstances, together with (d) the lack of any plausible interpretation for the adoption of the term "carrefourjeunesse" by the Respondent, (e) the evidence provided by the Complainant's demonstration of previous uses of the disputed domain name, and (f) the subsequent change in use of the disputed domain name, are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied the third element 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 name <carrefourjeunesse.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: February 25, 2023