

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Jesica Cano

Case No. D2023-0667

1. The Parties

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

The Respondent is Jesica Cano, Norway.

2. The Domain Name and Registrar

The disputed domain name <management-carefour.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 14, 2023. On February 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2023, the Registrar transmitted by email to the Center its verification response registrant and contact information for the disputed domain name 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 February 17, 2023 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 February 20, 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 February 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on March 24, 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 a company active in the retail sector and also offers travel, banking, insurance and ticketing services.

The Complainant provided evidence of the following trademarks:

- International verbal trademark CARREFOUR, registered under number 351147 on October 2, 1968, in classes 1 to 34;
- International verbal trademark CARREFOUR, registered under number 353849 on February 28, 1969, in classes 35 to 42.

The Respondent registered the disputed domain name on June 7, 2022. The Complainant provided screenshots that show that at the time of the drafting of the present Complaint the disputed domain name resolved to Pay-Per-Click (“PPC”) website.

5. Parties’ Contentions

A. Complainant

The Complainant states that it is a worldwide leader in retail and a pioneer of the concept of hypermarkets and operates more than 12.000 stores in more than 30 countries worldwide. The Complainant submits that it has built up a long-lasting worldwide reputation in connection with its trademarks CARREFOUR.

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that:

- the disputed domain name is identical to or confusingly similar with the Complainant’s well-known CARREFOUR trademark since it only differs from the Complainant’s trademark by the addition of the term “management”;
- even if the Panel were to consider the term “management” in assessing the likelihood of confusion, the average Internet user would be likely to believe that the disputed domain name originated with the Complainant and its services;
- the use of lower-case letter format 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 trademarks.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submitted that:

- the Respondent imitates the Complainant’s earlier registered trademarks CARREFOUR in the disputed domain name without any license or authorization from the Complainant;
- it has not authorized the use of the terms “carrefour” or terms similar thereto as a domain name;
- the Respondent has not, before the 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 resolves to a parking page;
- the adoption and extensive use by the Complainant of the trademark CARREFOUR predates the registration of the disputed domain name.

Finally, with regard to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- its CARREFOUR trademarks were so widely well-known, that it is inconceivable that the Respondent would have ignored the Complainant or its prior rights in the term CARREFOUR;
- the Respondent had the Complainant's name and trademark in mind when registering the disputed domain name;
- the Respondent's registration of the disputed domain name cannot have occurred by chance, but must have been influenced by the reputation of the Complainant and its prior trademarks;
- the use of "carefour" instead of CARREFOUR to refer to the Complainant is a common spelling error;
- the Respondent knew or should have known that, when registering and using the disputed domain name, she would violate of the Complainant's earlier rights;
- the Respondent chose the disputed domain name because of its identity with a trademark in which the Complainant has rights and a legitimate interest, in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's website;
- 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, taking advantage of a common spelling mistake;
- the Complainant's CARREFOUR trademark registrations significantly predate the registration date of the disputed domain name;
- the use of the disputed domain name which imitates the Complainant's renowned trademark in connection with a parking page falls within paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns multiple trademark registrations for the mark CARREFOUR.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. (See sections 1.1.2 and 1.7 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("[WIPO Overview 3.0](#)").

In this case, the disputed domain name incorporate the Complainant's trademark with an intentional omission or misspelling of one letter and the addition of the term "management". Pursuant to section 1.9 of the [WIPO Overview 3.0](#), 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.

Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see section 1.8 of the [WIPO Overview 3.0](#)), that the addition of other terms (whether, *e.g.*, descriptive or otherwise) does not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "management" does not avoid the confusing similarity arising from the incorporation of the Complainant's CARREFOUR trademark in the disputed domain name.

Finally, it is well accepted in past UDRP decisions that the generic Top-Level Domain ("gTLD"), such as ".com", ".net", ".org", is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable gTLD may itself form part of the relevant trademark (see section 1.11 of the [WIPO Overview 3.0](#)).

For the foregoing reasons the Panel concludes that the disputed domain name is confusingly similar to the Complainant's CARREFOUR trademark in which the Complainant has exclusive rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4 (c) of the Policy a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

“(i) before any notice to you [the Respondent] of the dispute, your 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) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [the Respondent] are 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 Complainant has asserted and presented evidence that the disputed domain name resolves to a parked page comprising PPC advertising links. The Complainant also contends that it has not authorized or licensed the Respondent to use the Complainant's CARREFOUR trademark in any way.

These assertions and evidence are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

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 disputed 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](#).

The Respondent chose not to contest the Complainant's allegations and has failed to submit any evidence to refute the Complainant's *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

From the record in this case there is no evidence to suggest that the Respondents' use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel agrees with the Complainant that the Respondents' use of the disputed domain name for a PPC parking website for the purpose of generating Internet traffic by fraudulently appropriating the Complainant's reputation and trademark cannot be regarded as legitimate noncommercial or fair use.

In addition, no evidence has been provided to prove that the Respondents have trademark rights corresponding to the disputed domain name, or that the Respondents have become known by the disputed domain name.

The Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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.

The Complainant provided evidence of multiple trademark registrations for the CARREFOUR mark that predate the registration of the disputed domain name. In light of the extensive use of the Complainant's CARREFOUR trademark in more than thirty countries it also appears to be fairly well-known not only in France but also the other countries in which the Complainant operates its retail stores.

Taking into consideration the fact that the disputed domain name incorporates an intentional misspelling of the Complainant's CARREFOUR trademark and that the disputed domain name resolves to a PPC website with links capitalizing on the Complainant's trademark, the Panel therefore has no doubt that the Respondents was aware of the Complainant and the Complainant's trademark rights when registering the disputed domain name.

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

Based on the record in this proceeding it is also undisputed that the disputed domain name directs Internet users to a PPC parking page.

The purpose of this PPC parking website clearly was to attract Internet users to the site, for profit, based on their confusing similarity with the Complainant. Once on the Respondent's page, some users likely click on PPC links, which presumably result in click-through fees and thus in a commercial benefit for the Respondent.

The Panel therefore infers that the Respondent by using the disputed domain name in this manner, has intentionally created a likelihood of confusion with the Complainant's trademark for the Respondent's financial gain and that the Respondent is using the disputed domain name 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 <management-carefour.com> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: April 7, 2023