

## **ADMINISTRATIVE PANEL DECISION**

### **Carrefour SA v. João Victor da Silva Rodrigues**

### **Case No. D2023-1524**

#### **1. The Parties**

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

The Respondent is João Victor da Silva Rodrigues, Brazil.

#### **2. The Domain Name and Registrar**

The disputed domain name <carrefouratacado.online> is registered with Hostinger, UAB (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 2023, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 April 12, 2023. Following a request for clarification from the Center, the Complainant filed a second amended Complaint on April 19, 2023.

The Center verified that the Complaint together with the first and second amended Complaints 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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on May 23, 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**

It results from the Complainant's undisputed allegations that the Complainant is a retail group that employs more than 384,000 people worldwide. It operates more than 12,000 stores and e-commerce sites in more than 30 countries generating a turnaround of EUR 76 billion in 2018.

It results from the evidence provided by the Complainant that the latter owns trademark registrations containing or consisting of the terms CARREFOUR or ATACADAO trademark. In particular, the Complaint is based on the following trademark registrations:

- International trademark registration CARREFOUR (verbal), no 351147, registered on October 2, 1968, for goods in classes 01 to 34 and designating amongst others Belgium, Netherlands, Luxembourg, Spain and Italy. This mark has duly been renewed and is in force;
- European Union trademark registration ATACADAO (verbal), no 012020194, filed on July 12, 2013, and registered on May 24, 2015, for services in class 35.

The Respondent registered the disputed domain name on January 28, 2023.

Finally, it results from the Complainant's documented allegations that the disputed domain name currently resolves to a hosted default parking page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant firstly submits that the disputed domain name is identical or highly similar to the Complainant's earlier trademarks, since it includes both earlier trademarks CARREFOUR and ATACADAO in their entirety.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not commonly known by the disputed domain name. Furthermore, the Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. Finally, the Respondent has not made, and is not making, a legitimate noncommercial or fair use of the disputed domain name and has not used the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the disputed domain name resolves to a hosted default parking page.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. According to the Complainant's undisputed allegations, it is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name, since the CARREFOUR and ATACADAO trademarks are well-known throughout the world. Taking into account the worldwide reputation of the Complainant and its trademarks, as well as the high level of notoriety of the Complainant, it is hard for the Complainant to believe that the Respondent was unaware of the existence of the Complainant and its trademark at the time of registration of the disputed domain name. The Complainant further contends that the composition of the disputed domain name, which contains two of the Complainant's trademarks, indicates that the Respondent knew about the Complainant. In addition, by maintaining the disputed domain name, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain names.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of various trademark registrations for the verbal elements CARREFOUR and ATACADAO. Reference is made in particular to International trademark registration CARREFOUR (verbal), no 351147, registered on October 2, 1968, and European Union trademark registration ATACADAO (verbal), no 012020194, registered on May 24, 2015.

While each case is judged on its own merits, 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, many UDRP panels have normally considered the domain name 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](#)"). This Panel shares this view and notes that the Complainant's registered trademarks CARREFOUR and ATACADAO are fully included in the disputed domain name. In addition, it is the view of this Panel that the combination of the two trademarks CARREFOUR and ATACADAO cannot exclude the confusing similarity between the disputed domain name and the Complainant's trademarks, since both marks are recognizable within the disputed domain name.

Furthermore, and according to UDRP panel consensus, the applicable generic Top-Level Domain ("gTLD") suffix ".online" in the disputed domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks pursuant to the Policy, paragraph 4(a)(i).

### **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

It results from the undisputed evidence provided by the Complainant that the disputed domain name currently resolves to a hosted default parking page. The Panel considers such (lack of) use neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy.

Furthermore, no evidence or information has been provided that could lead the Panel to conclude that the Respondent is commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

First, the Complainant's trademark CARREFOUR is well-known as it has been recognized by previous Panels under the Policy (see *Carrefour v. WhoisGuard Protected, WhoisGuard, Inc. / Sanny Biori*, WIPO Case No. [D2020-0106](#) with further references). In addition, the Panel notes that the disputed domain name entirely and identically contains the Complainant's trademark CARREFOUR and additionally a second of the Complainant's trademarks, *i.e.* ATACADAO.

Therefore, this Panel has no doubt that the Respondent positively knew that the disputed domain name contained the Complainant's trademarks CARREFOUR and ATACADAO when it registered that domain name. Registration of the disputed domain name in awareness of the reputed CARREFOUR mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith (see *e.g.* *Carrefour v. WhoisGuard Protected, WhoisGuard, Inc. / Sanny Biori*, WIPO Case No. [D2020-0106](#) with further references).

The above finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand, which are (see [WIPO Overview 3.0](#), sections 3.1, 3.2 and 3.6):

- (i) the nature of the domain name containing two of the Complainant's trademarks,
- (ii) the high degree of distinctiveness and the worldwide reputation of the CARREFOUR trademark which predates the registration of the disputed domain name and has been existing for more than five decades;
- (iii) clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name;

- (iv) the Respondent's failure to submit a Response or to present any (credible) evidence-backed rationale for registering the disputed domain name and good faith use;
- (v) the implausibility of any good faith use to which the disputed domain name may be put; and
- (vi) the Respondent concealing its identity behind a privacy shield.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 name, <carrefouratacado.online>, be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: June 7, 2023