

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. spiagu robinson

Case No. D2023-1608

1. The Parties

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

Respondent is spiagu robinson, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <carrefour-notificaciones.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 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 (Privacyprotection.com, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on April 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 17, 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 Respondent of the Complaint, and the proceedings commenced on April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 24, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on May 30, 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

Complainant is a company organized under the laws of France that is active in the retail industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand CARREFOUR, including, but not limited to, the following:

- word mark CARREFOUR, International (IR) trademark, registration number: 351147, registration date: October 2, 1968, status: active;
- word mark CARREFOUR, International (IR) trademark, registration number: 353849, registration date: February 28, 1969, status: active.

Moreover, Complainant has evidenced to own since 1995 the domain name <carrefour.com> which resolves to Complainant's main website at "www.carrefour.com", used to promote Complainant's products and services in the retail industry worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of the United States who registered the disputed domain name on March 19, 2023. By the time of rendering this decision, the disputed domain name does not resolve to any relevant content on the Internet, and – according to the case file – apparently has not yet done so in the past, but is passively held by Respondent instead.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends to be a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968, with nowadays operating more than 12,000 stores in more than 30 countries worldwide, additionally offering travel, banking, insurance or ticketing services. Also, Complainant points to the fact that its CARREFOUR trademark enjoys widespread continuous reputation and fame, as *e.g.* stated by a large number of earlier UDRP decisions.

Complainant submits that the disputed domain name is highly similar to Complainant's CARREFOUR trademark as it reproduces the latter, followed by the generic term "notificaciones". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not commonly known by the disputed domain name and there is no indication that Respondent acquired trademark rights relating to the disputed domain name, (2) Respondent has neither received a license nor any other authorization from Complainant to use its CARREFOUR trademark, and (3) Respondent has not used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services, but rather let the disputed domain name resolve to an error page. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant and its trademark are so widely well-known that it is inconceivable that Respondent ignored Complainant and its rights in CARREFOUR when registering the disputed domain name, (2) it is highly likely that Respondent chose the disputed domain name in the hope and expectation that Internet users searching for Complainant's services and products would instead come across Respondent's website, (3) Complainant's CARREFOUR trademark registration significantly predates the registration of the disputed domain name, and (4) the current absence of use of the disputed domain name may not be considered a good faith use thereof under the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "notificaciones", Spanish for "notifications") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to Respondent of the dispute, Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- Respondent has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- Respondent is not making 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 or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's CARREFOUR trademark, and the composition of the disputed domain name (by simply adding the term "notificaciones", in English "notifications", to such well-reputed trademark), and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Polic

y.

Moreover, the Panel in particular notes that Complainant's CARREFOUR trademark was registered and undisputedly acquired reputation and fame many decades before the registration of the disputed domain name, which includes the well-reputed CARREFOUR trademark in its entirety, took place. On top, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since the Written Notice on the Notification of Complaint dated April 18, 2023 could not be delivered due to a lack of a valid postal address. These facts at least throw a light on Respondent's behavior which supports the Panel's bad faith considerations.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <carrefour-notificaciones.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: June 12, 2023