

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Michaela Hamin, Walhill Farm and Scott Olivier, Southwest Building Solutions

Case No. D2023-1632

1. The Parties

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

The Respondents are Michaela Hamin, Walhill Farm, United States of America (“United States”), and Scott Olivier, Southwest Building Solutions, United States.

2. The Domain Names and Registrar

The disputed domain names <uae-carrefour.com> and <uaecarrefour.com> are registered with Launchpad.com Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondents are listed as the registrants and providing the contact details.

The Center verified that the 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 Respondents of the Complaint, and the proceedings commenced on April 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on May 16, 2023.

The Center appointed Angelica Lodigiani 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

The Complainant is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. The Complainant is listed on the index of the Paris Stock Exchange. The Complainant operates more than 12,000 stores in over 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 is also active in other fields, such as travel, banking, insurance, and ticketing services.

The Complainant is the owner of a global portfolio of trademark registrations for the word “Carrefour”, including the following trademarks:

- CARREFOUR, International registration No. 351147 of October 2, 1968, designating Benelux, Spain, Italy and Monaco, for goods from class 1 to class 34;
- CARREFOUR, International registration No. 353849 of February 28, 1969, designating Benelux, Czech Republic, Estonia, Spain, Hungary, Italy, Lichtenstein, Lithuania, Latvia, Morocco, Monaco, Montenegro, North Macedonia, Serbia, Slovenia, Slovakia, and San Marino, for services from class 35 to class 42;
- CARREFOUR, International registration No. 777569 of November 16, 2011, designating United Arab Emirates, Bahrain, Algeria, Egypt, Morocco, Oman, and Syria, for goods and services from class 1 to class 19, and from class 21 to class 41;
- CARREFOUR, United States registration No. 6763415, registered on June 21, 2022, for services in class 35.

The Complainant is also the owner of numerous domain names identical to, or comprising its CARREFOUR trademark, among which <carrefour.com>, registered in 1995.

The disputed domain names have been registered on March 20, 2023 and both resolve to error pages.

5. Parties' Contentions

A. Complainant

I. Consolidation of multiple Respondents

The Complainant requests the consolidation of the proceedings. Although the disputed domain names are registered in the name of two different registrants, according to the Complainant there is in fact only one Respondent behind both registrations. The disputed domain names are identical and differ only by a hyphen. Moreover, the disputed domain names were registered on the same day, within less than an hour, and through the same registrar. The name servers of both the disputed domain names are set to “NS1.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” and “NS2.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM”, which means that the Registrant did not validate the verification process. Finally, another domain name, featuring another well-known trademark, was registered in the name of one of the Respondents. Also in that case, the name servers are set to “NS1.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” and “NS2.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM”, and this domain name has been used for phishing activities according to Google Safe Browsing.

II. Complainant's considerations on the merits of the case

The Complainant maintains that the disputed domain names are confusingly similar to its earlier well-known CARREFOUR trademark as they incorporate this trademark together with the three letters “uae”, which is the abbreviation of “United Arab Emirates” and a hyphen in one of the disputed domain names.

The Complainant further maintains that the Respondents lack rights or legitimate interests in the disputed domain names. The Complainant has performed some searches and found no CARREFOUR trademarks or trademarks similar thereto, in the name of the Respondents. Moreover, there is no evidence that the Respondents are commonly known by the disputed domain names. The Complainant did not grant any license or authorization to the Respondents to use its CARREFOUR trademark in the disputed domain names or in any other manner or form. The Respondents have not used or prepared to use the disputed domain names in relation to a *bona fide* offering of goods or services. The disputed domain names resolve to error pages since the name servers are set in the “NS1.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” and “NS2.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” status. This occurs if the owner of the domain name has not completed the verification process within 15 days from registration. In this case, the domain names are deactivated. The disputed domain names are inherently likely to mislead Internet users, and there is no evidence that the Respondents have made a legitimate noncommercial or fair use of the disputed domain names. In addition, in light of the worldwide renown of the Complainant’s trademark, the Complainant sees no plausible use of the disputed domain names that would be legitimate, fair, and noncommercial.

Lastly, the Complainant maintains that the disputed domain names are registered and have been used in bad faith. More in particular, given the worldwide reputation of the Complainant and of its CARREFOUR trademark, it is inconceivable that the Respondents ignored the Complainant and its earlier rights. The Respondents’ choice of the disputed domain names cannot have been accidental and must have been influenced by the fame of the Complainant and by its earlier trademarks and business activities in the United Arab Emirates. In addition, by simply maintaining the disputed domain names, the Respondents are preventing the Complainant from reflecting its trademark in the corresponding domain names. The nonuse of a domain name does not prevent a finding of bad faith. The Complainant has detected another domain name including a well-known third party’s trademark in the name of one of the Respondents. This domain name has been used for fishing activities according to Google Safe Browsing. Considering the long-lasting and widespread use of the Complainant’s CARREFOUR mark, the Complainant cannot think of any future use of the disputed domain names by the Respondent in good faith.

B. Respondents

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

6. Discussion and Findings

A. Procedural Issue – Consolidation of multiple Respondents

According to Paragraph 10(e) of the Rules a “[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”. Paragraph 10(c) of the Rules provides that “the [p]anel shall ensure that the administrative proceeding takes place with due expedition”.

According to section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), where a complaint is filed against multiple respondents, panels shall consider whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties.

In evaluating whether the disputed domain names are subject to common control, the Panel notes the following common circumstances:

- (i) both disputed domain names consist of the geographical abbreviation “uae” followed by the Complainant’s trademark CARREFOUR, and both domain names have been registered under the generic Top-Level Domain (“gTLD”) “.com”. The main difference between the disputed domain names simply lies in the addition of a hyphen between the three letters “uae” and the trademark CARREFOUR in one of them;

- (ii) both disputed domain names were registered on the same day, within less than one hour and through the same registrar;
- (iii) the name servers of both disputed domain names are set to “NS1.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” and “NS2.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM”, which entails that in neither the Respondents validated the verification process.

Moreover, the Complainant found another domain name registered in the name of one of the Respondents through the same registrar of the disputed domain names, for which the name servers are set to the same status as the one indicated under point (iii) above.

In light of the foregoing the Panel finds that all these common circumstances cannot be the result of a mere coincidence, but show that the Respondents are the same or connected, despite being named differently. Therefore, the Panel is of the opinion that a consolidation of the proceedings in this case would be fair and equitable to all the parties as the disputed domain names are subject to a common control. Hereinafter, the Panel will refer to the Respondents in the singular, *i.e.*, “the Respondent”.

B. Identical or Confusingly Similar

The Panel finds that the Complainant has duly substantiated its trademark rights in the CARREFOUR trademark.

The disputed domain names fully include the Complainant’s trademark along with the prefix “uae”, which refers to the geographical region of the United Arab Emirates. Section 1.8 of the [WIPO Overview 3.0](#) states that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

In the instant case, the trademark CARREFOUR is clearly recognizable in the disputed domain names.

Therefore, the Panel is satisfied that the first condition under the Policy is met.

C. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

In the instant case, the Complainant maintains that it never licensed, nor authorized the Respondent to incorporate its trademark in a domain name and that the Respondent has no registered rights over the term “carrefour”. Moreover, from the documents available in the file, it does not appear that the Respondent has been commonly known by the disputed domain names. The Respondent has not, before the filing of the Complaint, used or prepared to use the disputed domain names in relation to a *bona fide* offering of goods or services. As to possible fair use of the disputed domain names, the Panel notes that the nature of these domain names, reproducing the Complainant’s trademark CARREFOUR identically along with the three letters “uae”, which designate a geographical area where the Complainant operates, is such as to carry a high risk of implied affiliation. Through the disputed domain names, the Respondent impersonates the Complainant or, at least, the disputed domain names suggest sponsorship or endorsement by the Complainant. In addition, the status of the name servers of the disputed domains are set to “NS1.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM” and “NS2.VERIFICATION-HOLD.SUSPENDED-DOMAIN.COM”, which means that the Respondent failed to verify the email address provided at the time of the registration of the disputed domain names within a 15 day given period. It is not clear why the Respondent failed to verify its email address, but, certainly, this conduct cannot amount to a fair use of the

disputed domain name as the Respondent is simply holding the disputed domain names without even confirming the correctness of the contact details provided at the time of their registration.

In light of the above, the Panel finds that the Complainant duly made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. In order to prove the contrary, the Respondent should have come forward with relevant and appropriate evidence and arguments, but failed to do so by choosing not to file a response.

The Panel is therefore satisfied that the second condition under the Policy is met.

D. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must establish the conjunctive requirement that the respondent registered and is using the disputed domain name in bad faith.

As far as registration in bad faith is concerned, the Panel notes that earlier UDRP panels have already found that the trademark CARREFOUR enjoys significant reputation (see *Carrefour SA v. ADAM DIONISIO*, WIPO Case No. [D2022-0421](#); *Carrefour SA v. Privacy Service Provided by Withheld for Privacy ehf / Kouakou Koffi, Lina*, WIPO Case No. [D2022-0651](#); *Carrefour v. Jane Casares, NA*, WIPO Case No. [D2018-0976](#); *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#); *Carrefour v. Tony Mancini, USDIET Whoisguard, Inc.*, WIPO Case No. [D2015-0962](#); *Carrefour v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2015-0769](#); *Carrefour v. Park KyeongSook*, WIPO Case No. [D2014-1425](#); *Carrefour v. Yujinhua*, WIPO Case No. [D2014-0257](#); and *Carrefour v. Karin Krueger*, WIPO Case No. [D2013-2002](#)).

Given the reputation of the Complainant's trademark, and the nature of the disputed domain names, it is not conceivable that the Respondent was not aware of the Complainant's trademark at the time of registration of the disputed domain names. The fact that the disputed domain names contain, in addition to the well-known trademark CARREFOUR, the geographical abbreviation "uae", designating an area where the Complainant operates, is a further indication that the Respondent intended to target the Complainant and its well-known CARREFOUR trademark, when it registered the disputed domain names. Internet users, when facing the disputed domain names would be misled about their origin, and would be induced to believe that they lead to websites pertaining to the Complainant.

In view of the foregoing, the Panel finds that the disputed domain names were registered in bad faith.

As far as use in bad faith is concerned, the Panel notes that the disputed domain names are inactive. However, passive holding of a domain name cannot prevent a finding of bad faith under the doctrine of passive holding. In particular, in the instant case, the disputed domain names include the well-known CARREFOUR trademark. Moreover, the Respondent failed to submit a response and the Panel cannot foresee any legitimate use that the Respondent could make of the disputed domain names, considering that the Respondent lacks rights or legitimate interests in them. The Respondent has failed to validate the contact email address that the Respondent communicated to the Registrar at the time of the registration of the disputed domain names. The Panel does not know why the Respondent did not validate its email address. However it is clear that the Respondent's behavior is not in good faith.

In light of the foregoing, the Panel finds that the inherently misleading disputed domain names were registered and have been used in bad faith, to intentionally attempt to attract Internet users to the Respondent's website or other on-line location, or to prevent the Complainant to reflect its CARREFOUR trademark in a corresponding domain name, or for some other malicious intent, including phishing activities. In this respect, the Panel notes that the Complainant has found another domain name, including a third party's renowned trademark, registered in the name of the Respondent and used for phishing activities according to the Google Safe Browsing.

In light of the above, and in the absence of any contrary arguments and evidence from the Respondent, the Panel concludes that the third and last requirement under the Policy has been met.

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, <uae-carrefour.com> and <uaecarrefour.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: June 13, 2023