

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. diao qian qian  
Case No. D2023-2000

### **1. The Parties**

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

Respondent is diao qian qian, China.

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

The disputed domain name <carrefourmag.com> (the “Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown registrant) and contact information in the Complaint. The Center sent an email communication to Complainant on May 8, 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 in English on May 31, 2023.

On May 8, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 31, 2023, Complainant submitted its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 22, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 29, 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, headquartered in France, and listed on the Paris Stock Exchange (CAC 40) index, operates retail stores worldwide, as well as travel, banking, insurance, or ticketing services. Complainant operates more than 12,000 stores in over 30 countries, with more than 321,000 employees globally. In 2019, its revenues were approximately EUR 80.7 billion.

Complainant owns numerous registered trademarks worldwide for CARREFOUR, such as:

- International trademark registration No. 351147 for CARREFOUR, registered on October 2, 1968; and
- International trademark registration No. 353849 for CARREFOUR, registered on February 28, 1969.

Complainant also owns several domain names with the CARREFOUR mark, and owns and operates its corporate website at <carrefour.com>.

The Domain Name was registered on March 6, 2023. At the time of filing of the Complaint, the Domain Name redirected to a third party website that appeared to offer lottery tickets.

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

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

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for CARREFOUR and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well known CARREFOUR products and services.

Complainant notes that it has no affiliation with Respondent and contends that the Domain Name redirects towards a third-party website published in Chinese language and hosting online lottery games. Complainant further contends that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submitted its original Complaint in English. In its email dated May 31, 2023 and amended Complaint, Complainant submitted a request that the language of the proceeding should be English. Complainant contends that it is a French entity and Chinese is not the native language of Complainant or its representative; and that it would add great additional expense and delay if the need for translation by Complainant is required.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Domain Name is composed of Complainant's trademark which is in Latin plus the English letters "mag". In addition, the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of commencement of the proceeding and indicated that Respondent may file a Response in either Chinese or English, but none was filed.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese while conducting the proceeding in English would not cause unfairness to either Party in this case.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

### **6.2. Substantive Issues**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; and a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

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

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the CARREFOUR trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the CARREFOUR trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the CARREFOUR trademarks.

With Complainant's rights in the CARREFOUR trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's CARREFOUR trademarks. These CARREFOUR trademarks are recognizable in the Domain Name. In particular, the Domain Name's inclusion of Complainant's trademark CARREFOUR in its entirety, with an addition of the term "mag" does not prevent a finding of confusing similarity between the Domain Name and the CARREFOUR trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its CARREFOUR trademarks, and does not have any rights or legitimate interests in the Domain Name. Respondent is also not known to be associated with the CARREFOUR trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of filing of the Complaint, the Domain Name reverted to a third party website that offered lottery tickets, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have 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 complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the CARREFOUR trademarks long predate the registration of the Domain Name. Complainant is also well known. Indeed, the record shows that Complainant's CARREFOUR trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the CARREFOUR trademarks when it registered the Domain Name or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; and see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#). Further, the registration of the Domain Name, incorporating Complainant's CARREFOUR trademark in its entirety with the additional term “mag” for “magasin” in French referring to the stores of Complainant, suggests Respondent's actual knowledge of Complainant's rights in the CARREFOUR trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

In addition, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name reverted to a third party website that promoted and offered lottery tickets, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered CARREFOUR-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use, including Respondent's unauthorized reproduction of

Complainant's CARREFOUR marks in the Domain Name which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered CARREFOUR-branded products for sale, cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known CARREFOUR products and services of Complainant or authorized partners of Complainant. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's CARREFOUR marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <carrefourmag.com> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: July 5, 2023