

## ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Pedro Alberto Huerta, Pedro Alberto Zaldivar, Elizar Ponce,  
Name Redacted, Alejandro Pavia, Name Redacted  
Case No. D2024-0101

### 1. The Parties

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

The First Respondent is Pedro Alberto Huerta, Pedro Alberto Zaldivar, Mexico.

The Second Respondent is Elizar Ponce, Mexico, Name Redacted<sup>1</sup>.

The Third Respondent is Alejandro Pavia, Mexico.

The Fourth Respondent is Name Redacted<sup>2</sup>.

### 2. The Domain Names and Registrars

The disputed domain names <es-carrefour.com>, <pass-carrefours-es.com>, <wb-carrefour.com>, and <wbcarrefour.com> are registered with Tucows Inc. (the “First Registrar”).

The disputed domain name <carrefourwb.com> is registered with Key-Systems GmbH (the “Second Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2024.

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<sup>1</sup> The Second Respondent appears to have used the name of a third party company when registering the disputed domain name <pass-carrefours-es.com>. In light of the potential identity theft, and the Response submitted on February 14, 2024, the Panel has redacted the Respondent’s company name from this decision.

<sup>2</sup> The Fourth Respondent appears to have used the name of a third party when registering the disputed domain name <carrefourwb.com>. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name <carrefourwb.com>, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

On January 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 11, 2024, the First Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Redacted for Privacy) and contact information in the Complaint. On January 16, 2024, the Second 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 Respondents (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 16, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on January 17, 2024.

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 Respondents of the Complaint, and the proceedings commenced on January 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2024. The Fourth Respondent sent email communications to the Center on January 25, 2024 and February 3, 2024 claiming that one of his accounts had been hacked and the disputed domain name <carrefourwb.com> was registered using his information and without his permission. On February 14, 2024, a third-party related to the organization claimed by the Second Respondent filed a Response to the Complaint claiming that a person by the name of Elizar Ponce had never worked for them and would not have had authorization to register a domain name on behalf of the company. The Center notified the parties of the Commencement of Panel Appointment Process on February 15, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 21, 2024. 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**

According to information in the Complaint, the Complainant is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. With a revenue of 83 billion euros in 2022, the Complainant is listed on the index of the Paris Stock Exchange. The Complainant operates more than 12,000 stores in more than 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 additionally offers travel, banking, insurance and ticketing services.

The Complainant is the holder of a number of trademarks for CARREFOUR and CARREFOUR PASS, including the International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods and services in international classes 1 to 34, the International trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42, the International trademark CARREFOUR PASS No. 719166, registered on August 18, 1999, duly renewed, and designating services in international class 36.

The Complainant has registered the domain name <carrefour.com> since October 25, 1995, that it uses as its official website. Also, the Complainant has registered the domain name <pass-carrefour.com> since 2019.

The disputed domain names were registered between November 30, 2023 and December 21, 2023. According to un rebutted evidence with the Complaint, the disputed domain name <pass-carrefours-es.com> resolved to a “deceptive website” warning page and the other disputed domain names did not resolve to active websites. At the date of the Decision, the disputed domain names <es-carrefour.com>, <wbcarrefour.com> and <wb-carrefour.com>, do not resolve to active websites, and the disputed domain names <carrefourwb.com> and <pass-carrefours-es.com> resolve to “deceptive websites” warning pages.

## **5. Parties’ Contentions**

### **A. Complainant**

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

Notably, the Complainant contends that the disputed domain names are confusingly similar to its earlier well-known CARREFOUR and CARREFOUR PASS trademarks, which are entirely incorporated in the disputed domain names. The addition of generic terms or letters such as “es”, “s-es” and “wb” (and “pass” if we consider the CARREFOUR trademark only) to a trademark in a domain name does nothing to diminish the likelihood of confusion arising from that domain name. As regards the disputed domain name <pass-carrefours-es.com> (including both CARREFOUR and CARREFOUR PASS trademarks, which are immediately recognizable in the domain name), confusing similarity is not precluded by the inversion of the elements of the trademark or by the addition of the terms “pass-” and “s-es”.

As regards the second element, the Complainant argues that the Respondents have acquired no trademark in the term CARREFOUR (or terms similar thereto) which could have granted the Respondents with rights in the disputed domain names. There is no evidence that the Respondents have been commonly known by the disputed domain names as an individual, business, or other organization. Moreover, the Complainant has not authorized the use of its earlier trademarks or terms similar thereto in the disputed domain names in any manner or form. The Respondents have not, before the Complaint, used or made preparations to use the disputed domain names in relation to a bona fide offering of goods or services. The disputed domain names <carrefourwb.com>, <es-carrefour.com>, <wbcarrefour.com> and <wb-carrefour.com> are not associated with any active website and therefore resolve to error pages. The disputed domain name <pass-carrefours-es.com> is blocked to the Complainant’s representative by the browser’s phishing and malware protection feature and the following warning message appears: “Dangerous site Attackers on the site you’re trying to visit might trick you into installing software or revealing things like your password, phone, or credit card number. Chrome strongly recommends going back to safety”. The disputed domain names are inherently likely to mislead Internet users, and there is no evidence that the Respondents have been making a legitimate noncommercial or fair use of the disputed domain names.

With respect to the third element, the Complainant submits that it and its trademarks were so widely well-known, that it is inconceivable that the Respondents ignored the Complainant or its earlier rights. The Complainant submits that it is highly likely that the Respondents chose the disputed domain names because of their identity with or similarity to a trademark in which the Complainant has rights and legitimate interests. Also, the Complainant’s trademark registrations significantly predate the registration dates of the disputed domain names. Therefore, the Respondents knew or should have known that, when acquiring and using the disputed domain names, he would do so in violation of the Complainant’s earlier rights. In addition, the Complainant submits that one of the Respondents has already been involved in previous UDRP cases in which Panels decided the transfer of the disputed domain names to the Complainant, and that certain cases shared several aspects with the present case.

## **B. Respondents**

The Second Respondent filed a late Response to the Complaint, claiming that a person by the name of Elizar Ponce had never worked for them and would not have had authorization to register a domain name on behalf of the company and consented to the transfer of the disputed domain names. The Fourth Respondent claimed in its informal communications to the Center that one of his accounts had been hacked and the domain name <carrefourwb.com> was registered using his information and without his permission. The other Respondents did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Late Response**

Paragraph 14(a) of the Rules provides that, in the event of a late response, absent exceptional circumstances, panels shall proceed to a decision based solely on the complaint. On the other hand, paragraph 10(b) of the Rules requires panels to ensure that parties are treated with equality and that each party is given a fair opportunity to present its case.

The Response of the Second Respondent was filed a few days late. Based on the overall circumstances of the case, and also taking into account the fact that the Response was filed before the appointment of the Panel, and that the delay has not delayed the resolution of this proceeding – and also bearing in mind the Panel's obligations under paragraph 10(b) of the Rules – the Panel accepts the late filing of the Response.

### **6.2. Consent to transfer**

In its Response, the Second Respondent claimed that a person by the name of Elizar Ponce had never worked for them and would not have had authorization to register a domain name on behalf of the company. It consented to the remedy requested by the Complainant.

The Panel decides that the circumstances of the case require a decision on the merits. A substantive decision on the merits in relation to the disputed domain names is relevant to reaching a conclusion on a ground expressly pleaded by the Complainant as establishing bad faith registration and use – namely, that the Respondent has already been involved in previous UDRP cases in which Panels decided the transfer of the disputed domain names to the Complainant and that Elizar Ponce has registered other domain names potentially infringing upon other third-party rights (namely <credit-agricole-fr.mx> and <meine-postbank-de.mx>), which means that the Respondent has engaged in a pattern of conduct of registering domain names in order to prevent the owner of a trademark or service mark from reflecting the mark in corresponding domain names. Accordingly, the Panel exercises its discretion to proceed to a substantive decision on the merits in relation to the disputed domain names.

### **6.3. Consolidation: Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that (i) the disputed domain names were registered in a short time frame, between November 30, 2023 and December 21, 2023; (ii) the disputed domain names <carrefourwb.com>, <es-carrefour.com> and <wbcarrefour.com> were registered on the same exact day (i.e. December 6, 2023), (iii) the disputed domain names <es-carrefour.com>, <pass-carrefours-es.com>, <wbcarrefour.com> and <wb-carrefour.com> were registered through the same registrar (i.e. Tucows, Inc.) and the same reseller (i.e. Triara.com S.A. de C.V.), (iv) the disputed domain names were registered under the same TLD (i.e. ".com"), (v) the disputed domain names share a similar naming pattern and combine the Complainant's CARREFOUR and CARREFOUR PASS trademarks with the same two-letter additions ("es" and "wb"), (vi) none of the disputed domain names is associated with an active website as they all lead to error pages or warning pages. In addition, with respect to the disputed domain name <carrefourwb.com>, which is registered with a different registrar than the other disputed domain names, its registrant, the Fourth Respondent claimed in its informal communications to the Center that one of his accounts had been hacked and the domain name was registered using his information and without his permission. Moreover, none of the named Respondents have challenged the Complainant's contention that the underlying registrant of all disputed domain names is the same person and/or that all disputed domain names are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as the "Respondent") in a single proceeding.

#### **6.4. Substantive matters**

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith.

##### **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 the Complainant's trademark and the disputed domain name. WIPO 3.0, section 1.7.

The 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 that the marks CARREFOUR and CARREFOUR PASS are recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms or letters (here, “es”, “s”, “wb” and hyphens) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Some of the disputed domain names resolved before the date of the Complaint or currently resolve to “deceptive website” warning pages provided by Google. Panels have held that the use of a domain name for illegal activity, here phishing and distributing malware, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The other disputed domain names resolve to inactive websites, which, under the circumstances of the case, do not give rise to a right or legitimate interest in the disputed domain names.

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.

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.

In this case, according to the un rebutted assertions of the Complainant, its CARREFOUR and CARREFOUR PASS trademark were widely used in commerce well before the registration of the disputed domain names: few of the Complainant’s trademarks date back to 1968, some 54 years before the registration of the

disputed domain names, and the Complainant has registered the domain name <carrefour.com> that resolves to its main website since 1995. The reputation of the Complainant's trademarks is clearly established. The disputed domain names are confusingly similar to the Complainant's trademarks. Under these circumstances, the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the confusingly similar disputed domain names.

As regards the use in bad faith, some of the disputed domain names resolved before the date of the Complaint or currently resolve to "deceptive website" warning pages provided by Google. The Panel agrees with previous panels that held that the use of a domain name for illegal activity, here phishing and distributing malware, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As regards the other disputed domain names, that do not resolve to active websites, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

In the circumstances of the case, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 names <carrefourwb.com>, <es-carrefour.com>, <pass-carrefours-es.com>, <wb-carrefour.com>, and <wbcarrefour.com> be transferred to the Complainant.

*/Mihaela Maravela*

**Mihaela Maravela**

Sole Panelist

Date: March 6, 2024