

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. DUFOUR FRANCOIS

Case No. D2024-0903

### **1. The Parties**

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

The Respondent is DUFOUR FRANCOIS, France.

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

The disputed domain name <carréfourbanqué.com> (<xn--carrfourbanqu-szbj.com>) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 29, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 5, 2024, 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 March 6, 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 Respondent of the Complaint, and the proceedings commenced on March 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 2, 2024.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on April 26, 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**

The Complainant is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968. With a turnaround of EUR 76 billion in 2018, the Complainant is listed on the index of the Paris Stock Exchange (CAC 40). It 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 without a doubt a major and well-known worldwide leader in retail. It also offers travel, banking, insurance and ticketing services.

The Complainant is the owner of the following prior trademarks:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968 in classes 1 to 34, duly renewed;
- International trademark CARREFOUR No. 353849, registered on February 28, 1969 in classes 35 to 42, duly renewed;
- European trademark CARREFOUR No. 005178371 registered on August 30, 2007 in classes 9, 35 and 38, duly renewed
- French trademark CARREFOUR BANQUE No. 3585968, registered on July 2, 2008 in class 36, duly renewed.

The Complainant asserts that it is also the owner of numerous domain names identical to - and comprising – its trademarks, such as the domain name <carrefour.com> which has been registered since 1995, or <carrefour.fr> which was registered on June 23, 2005.

The Complainant submits that its earlier trademarks enjoy a widespread continuous reputation, as stated by a large number of UDRP decisions on which it relies.

The Complainant's fame and notoriety is also evidenced on the Internet. Indeed, the Complainant's Facebook page is currently "liked" by more than 11 million Internet users.

The disputed domain name <carréfourbanqué.com> was registered using a privacy service on January 27, 2024.

The registrant is an individual, the personal data of which were disclosed by the Registrar, according to the Rules of the procedure. It appears that the registrant is based in France.

The searches that were conducted on The Wayback Machine "www.archive.org" show that the disputed domain name used to resolve to a page dedicated to banking services, providing on the contact page a phone number that appears to be the phone number of a French bank. Further searches on the Respondent on Google show that there is an individual with the same name as the Respondent, who is an employee of this same French bank.

At the time of the filing of this Complaint, the disputed domain name resolved to an error page.

## 5. Parties' Contentions

### A. Complainant

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

The Complainant contends that the disputed domain name <carréfourbanqué.com> is confusingly similar to its earlier well-known trademarks CARREFOUR and CARREFOUR BANQUE.

The use of the letter "é" and the inversion of the elements of the trademark CARREFOUR BANQUE are not significant in determining whether the disputed domain name is identical or confusingly similar to the CARREFOUR and CARREFOUR BANQUE trademarks.

The earlier trademarks of the Complainant are immediately recognizable within the disputed domain name.

The disputed domain name reproduces the Complainant's trademarks. Therefore, the Complainant contends that the contested domain name is confusingly similar to the Complainant's earlier trademarks.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name. Further to the Center's Notice of Registrant Information, the Respondent was identified as François DUFOUR. Firstly, the Complainant performed searches and found no CARREFOUR or CARREFOUR BANQUE trademark owned by the Respondent.

There is no evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization.

Secondly, the Respondent reproduces the Complainant's earlier registered trademarks in the disputed domain name without any license or authorization from the Complainant, which is strong evidence of the lack of rights or legitimate interest. The Complainant submits that it has not authorized the use of its earlier trademarks or terms similar thereto in the disputed domain name in any manner or form.

Thirdly, the Complainant puts forth that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a bona fide offering of goods or services. It underlines that the disputed domain name resolves to a page that displays the message "503 Service unavailable".

The disputed domain name is inherently likely to mislead Internet users, and there is no evidence that the Respondent has been making a legitimate non-commercial or fair use of the disputed domain name. In addition, in light of the worldwide renown of the Complainant's trademark, the Complainant sees no plausible use of the domain that would be legitimate, fair and non-commercial.

Fourthly, the CARREFOUR or CARREFOUR BANQUE trademarks predate by far the disputed domain name. The Complainant submits that it has made a prima facie case of the Respondent's lack of rights or legitimate interests in the disputed domain name.

Lastly, the Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons.

Firstly, the Complainant submits that the Complainant and its trademarks are so widely well-known, that it is inconceivable that the Respondent, who is domiciled in France, ignored the Complainant or its earlier rights. As indicated above, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by Panels for years.

The Respondent, who is domiciled in France, necessarily had the Complainant's name and trademark in mind when registering the disputed domain name. The Respondent's choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks.

Secondly, the Complainant submits that it is highly likely that the Respondent chose the disputed domain name because of its identity with or similarity to a trademark in which the Complainant has rights and legitimate interest. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's domain. Such use cannot be considered a good faith use (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 3.1.4).

Thirdly, the Complainant's trademark registrations significantly predate the registration date of the disputed domain name.

Fourthly, the current use of the disputed domain name may not be considered a good faith use. By simply maintaining the disputed domain name, the Respondent is preventing the Complainant from reflecting its trademarks in the disputed domain name.

In addition, the disputed domain name resolves to an error page. The non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding.

Fifthly, given the long-lasting international presence of the Complainant using its trademarks, the Complainant cannot think of any future use of the disputed domain name that may be done by the Respondent in good faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

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 Overview 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 entirety of the CARREFOUR marks is reproduced within the disputed domain name, with a slight difference in the letter "e" that includes an acute accent. Accordingly, the disputed domain name is confusingly similar to the CARREFOUR BANQUE mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or 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; or

(ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is 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.

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.

The Respondent is not commonly known under the disputed domain name.

The Complainant asserts that the Respondent is not related in any way with the Complainant and that it did not grant neither a license nor authorization to the Respondent to use the CARREFOUR and CARREFOUR BANQUE trademarks or to register the disputed domain name. This allegation was not contested by the Respondent.

There is no indication that the Respondent is commonly known by the CARREFOUR and CARREFOUR BANQUE trademarks.

There is no evidence of any bona fide use of the disputed domain name.

The Respondent did not respond to the Complainant to rebut its prima facie case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

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 name. 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 name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or the respondent has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the Respondent has 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 the respondent has engaged in a pattern of such conduct; or

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

(iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

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.

In the present case, the Panel notes that the Respondent, who is based in France, and previously used the disputed domain name in relation with banking services, was well aware of the well-known CARREFOUR and CARREFOUR BANQUE trademarks when it registered the disputed domain name. In addition, as per the evidence on record, it appears that an individual with the same name as the Respondent is an employee of a competitive French bank and as such, the registration of the disputed domain name was likely made in an attempt to disrupt the Complainant's business and confuse Internet users. Therefore, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location, according to paragraph 4(b)(iv) of the Policy.

The current non-use of the disputed domain name does not prevent a finding of bad faith use.

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. 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 name, 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 Policy.

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of 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 name <carrefourbanqué.com> be transferred to the Complainant.

*/Marie-Emmanuelle Haas/*

**Marie-Emmanuelle Haas**

Sole Panelist

Date: May 10, 2024