

ADMINISTRATIVE PANEL DECISION

Carrefour SA v. Rosa Francisko and Batisto Perero, Consum S.L.
Case No. D2024-1088

1. The Parties

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

The Respondents are Rosa Francisko, Spain and Batisto Perero, Consum S.L., Spain.

2. The Domain Names and Registrars

The disputed domain name <carrefour-express.com> is registered with Registrar of Domain Names REG.RU LLC. The disputed domain names <carrefour-express.info>, <carrefour-express.org>, <carrefour-express.pro>, and <carrefour-market.pro> are registered with Hostinger Operations, UAB (together, the “Registrars”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 12, 2024. On March 12, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 13, 2024, the Registrars transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Protection of Private Person, REDACTED FOR PRIVACY/Privacy Protect, LLC (PrivacyProtect.org), GDPR Masked) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 18, 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 and/or that all domain names are under common control.

On March 18, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the disputed domain name <carrefour-express.com> is Russian. On March 21, 2024, the Complainant filed an amended Complaint and confirmed its request that English be the language of the proceeding. The Respondents did not submit any comment on the Complainant’s submission.

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 in English and Russian of the Complaint, and the proceedings commenced on March 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on April 19, 2024.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on May 7, 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 large retail chain which has operated hypermarkets since 1968. It had revenues of EUR 83 billion in 2022 and is listed on the Paris Stock Exchange (CAC 40). The Complainant operates more than 12,000 stores in over 30 countries, has more than 384,000 employees worldwide, and 1.3 million daily unique visitors in its stores. The Complainant relies, inter alia, on the following registered trademarks that it owns: International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 1 to 34; International trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42; European Union Intellectual Property Office (“EUIPO”) trademark CARREFOUR No. 005178371, registered on August 30, 2007, duly renewed, and designating goods and services in international classes 9, 35 and 38; EUIPO trademark CARREFOUR EXPRESS (figurative) No. 005405832, registered on October 18, 2007, duly renewed, and designating goods and services in international classes 29, 30, 31, 32, 33 and 35; International trademark CARREFOUR MARKET No. 1034794, registered on December 23, 2009, duly renewed and designating services in international class 35; and EUIPO trademark CARREFOUR MARKET No. 006659643, registered on December 18, 2008, duly renewed, and designating services in international class 35.

The Complainant also operates a number of websites, for instance, the domain name <carrefour.com> which has been registered since 1995, <carrefour.fr> since 2005 and <carrefourmarket.fr> since 2007.

The disputed domain names have the following registration dates: <carrefour-express.com>: February 9, 2024; <carrefour-express.info>: February 16, 2024; <carrefour-express.org>: February 14, 2024; <carrefour-express.pro>: February 18, 2024; and <carrefour-market.pro>: February 22, 2024. The disputed domain names are not associated with any active website and currently resolve to error pages or to standard Registrar landing pages.

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 names.

Notably, the Complainant contends that all the disputed domain names are confusingly similar to its earlier CARREFOUR trademarks. These are immediately recognizable and are entirely reproduced in the disputed domain names together with the terms “express” and “market”, separated by a hyphen. The Complainant says that the disputed domain names <carrefour-express.com>, <carrefour-express.info>, <carrefour-

express.org>, and <carrefour-express.pro> are also identical to the Complainant's CARREFOUR EXPRESS trademarks and the disputed domain name <carrefour-market.pro> is identical to the Complainant's CARREFOUR MARKET trademarks.

According to the Complainant it is well established that the addition of a generic term such as "express" or "market" to a trademark in a domain name does not diminish the likelihood of confusion arising from that domain name.

In terms of rights and legitimate interests the Complainant reiterates that the information available to it leads it to believe that the disputed domain names were registered by the same person or entity or are under common control that can be traced back to Consum, a Spanish supermarket cooperative, and a competitor of the Complainant. The Complainant says it performed appropriate searches and found no CARREFOUR (or similar) trademarks owned by the Respondents and thus asserts that the Respondents have acquired no trademark rights in the term "carrefour" which could have supported a finding that the Respondents have rights in the disputed domain names. The Complainant also points out that it has found no evidence that the Respondents are commonly known by the disputed domain names. The Complainant filed the present Complaint soon after the registration of the disputed domain names, by which it says that it intended to establish that it will not allow the Respondents to become commonly known by the disputed domain names. The Complainant has not granted any license or authorization to the Respondents in relation to its CARREFOUR trademarks. According to the Complainant, the Respondents did not, before the original filing of the Complaint, use or prepare to use the disputed domain names in relation to a bona fide offering of goods or services. The Complainant points out that the disputed domain names are not associated with any active website and currently resolve to error pages or to standard landing pages provided by the relevant Registrar. Such passive holding of a disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use, the Complainant says.

Further the Complainant contends that the disputed domain names are inherently likely to mislead Internet users, and there is no plausible use of the disputed domain names that would be legitimately fair and noncommercial. In any case, the burden is on the Respondents to establish their rights or legitimate interests, and the Complainant submits that it has made out a prima facie case as is required in line with the Policy.

The Complainant contends that its trademarks are so widely well known, and so long predate the registration of the disputed domain names, that it is inconceivable that the Respondents did not know of the Complainant or its earlier rights. Furthermore, the Respondents are competitors of the Complainant, operating in the business of supermarkets, the Complainant says, so the Respondents must have had the Complainant's name and trademarks in mind when registering the disputed domain names. The Respondents' choice of domain names cannot have been accidental and must have been influenced by what the Complainant refers to as its fame, and its earlier trademarks. The Complainant points out that UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Complainant also contends 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. The Complainant contends that 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 Respondents' domain names, which cannot be considered a good faith use. The Complainant expresses its concern about the fact that the disputed domain names were registered by, or are available to a competitor of the Complainant, and that not long after the Complainant had announced its intention to acquire new stores in Spain (including in the same area where the Respondent Batisto Perero, Consum S.L. is located, in the Valencian Community) to convert to Carrefour Market and Carrefour Express stores.

The Complainant contends that in any case a quick trademark search or a simple search engine query, would have revealed to the Respondents the existence of the Complainant and its trademarks, and therefore the Respondents knew or should have known that they violated the Complainant's earlier rights by registering the disputed domain names. Furthermore, by simply maintaining the disputed domain names, the

Respondents are preventing the Complainant from reflecting its trademarks in the corresponding domain names. The non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding, the Complainant says, and no future use of the disputed domain names in good faith can be imagined.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issues: Consolidation: Multiple Respondents

The Complaint was filed in relation to nominally different domain name registrants. However, the Complainant alleges that the domain name registrants are in fact 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. Under Paragraph 3(c) of the Rules, the Complaint may relate to more than one domain name, if the person or entity that is the underlying registrant of the domain names is the same. As the Complainant has submitted, in the present matter several factors indicate that the disputed domain names were registered by the same person or entity. The disputed domain names share the same naming pattern, including the CARREFOUR trademark with a generic term, separated by a hyphen. The composition of each disputed domain refers to the Complainant's CARREFOUR EXPRESS and CARREFOUR MARKET trademarks. The disputed domain names were registered within a relatively brief period, between February 9 and February 22, 2024. Further, none of the disputed domain names is associated with an active website. The registrants of the disputed domain names are apparently located in Spain. Moreover, both registrant addresses point to Consum supermarkets, these being Consum Valencia, in Spain corresponding to the address of the Respondent Rosa Francisko, and the address of Batisto Perero, Consum S.L corresponds to the location of a Consum supermarket in the city of Orihuela, in Spain. The Complainant contends that Consum S.L is a Spanish supermarket cooperative and a competitor of the Complainant. The telephone number is also the same.

All these elements indicate that the disputed domain names are registered by the same Respondent (or are at least under common control), and for that reason and in the absence of any Respondents' response, the Panel finds that the consolidation would be fair and equitable to all Parties (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2).

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.

6.2. Preliminary Issues: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name <carrefour-express.com> is Russian. The language of the Registration Agreement for other disputed domain names is English. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain names comprise the English term "express" which, together with the CARREFOUR trademark, corresponds to the Complainant's CARREFOUR EXPRESS trademark; furthermore, the translation of the Complaint would entail significant additional expenses for the Complainant and would delay the proceeding.

The Respondent did not make any submissions with respect to the language of the proceeding. It did not object to the Complainant's request that the language of the proceeding be English and did not bring forward any reasons why that would not be efficient or fair.

In exercising its discretion to use a language other than that of the registration agreement, 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. [WIPO Overview 3.0](#), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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 Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. In particular, it has established registered trademark rights in the marks CARREFOUR, CARREFOUR MARKET and CARREFOUR EXPRESS.

Each of the disputed domain names reprises one of these marks in their entirety and without any alteration, or addition other than a hyphen, and accordingly the disputed domain names are confusingly similar to these marks 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

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 arguments nor advanced any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. There is no evidence before the Panel that the Respondent used the disputed domain names (or had demonstrable plans for such use) with a bona fide offering, is commonly known by the disputed domain names, or has made or intends to make legitimate noncommercial or fair use of them. In fact, the Complainant contends that the disputed domain names were likely registered by a supermarket competitor of the Complainant in circumstances that are not consistent with that competitor having or acquiring rights or legitimate interests in them.

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.

In the present case, the Panel notes that the Respondent appears to be a competitor of the Complainant in the supermarket sector in Spain. In any case, the Complainant's CARREFOUR trademark is very widely used in many countries and the Complainant also has trademark rights in CARREFOUR EXPRESS and CARREFOUR MARKET. It is highly improbable that the Respondent in this matter was unaware of the Complainant or its exclusive trademark rights at the time of registration of the disputed domain names and registered all of these coincidentally. The briefest of Internet searches would have revealed those facts in any case. Further, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the Respondent's concealment of its identity are also indications of bad faith registration.

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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that given the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain names, the Respondent did not rebut the Complainant's contentions as regarding the Respondent's awareness of, and intent to target, the Complainant, the Panel finds that the passive holding of the disputed domain names does not prevent a finding of 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 <carrefour-express.com>, <carrefour-express.info>, <carrefour-express.org>, <carrefour-express.pro>, and <carrefour-market.pro> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: May 21, 2024