

ADMINISTRATIVE PANEL DECISION

Carrefour SA. v. Moustapha DIOP
Case No. D2024-1821

1. The Parties

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

The Respondent is Moustapha DIOP, Senegal.

2. The Domain Name and Registrar

The disputed domain name <carrefour-dakar.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 7, 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 May 9, 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 May 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 7, 2024.

The Center appointed Gary Saposnik as the sole panelist in this matter on June 12, 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.

On June 13, 2024, the Respondent sent an informal email response. Pursuant to paragraph 10 of the Rules, the Panel in its discretion will take into consideration the submission for its admissibility, relevance, materiality and weight of the evidence, while also noting that the Respondent did not timely file any response to the Complaint, while having received proper notice and service of the Complaint.

4. Factual Background

The Complainant, Carrefour SA, is a global retailer founded in 1968, operating hypermarkets through more than 12,000 stores in more than 30 countries. The Complainant has more than 384,000 employees worldwide and 1.3 million daily unique visitors to its stores. It had revenue of 83 billion Euros in 2022 and is listed on the index of the Paris Stock Exchange. The Complainant additionally offers travel, banking, insurance, or ticketing services.

The Complainant is the owner of hundreds of trademark rights worldwide for CARREFOUR, which includes the following:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968, for goods in classes 1 to 34;
- International trademark CARREFOUR No. 353849, registered on February 28, 1969, for services in classes 35 to 42;
- European Union trademark CARREFOUR No. 005178371, registered on August 30, 2007, for services in classes 9, 35 and 38.

The Complainant is the registrant of the domain name <carrefour.com>, registered since October 25, 1995, and used by the Complainant to provide information regarding its various goods and services. It is also the registrant of numerous other domain names containing its CARREFOUR mark, including <carrefour.com.br> since 1997, <carrefour.fr> since 2005, and <carrefour.sn> since 2018.

The Complainant's presence on the Internet also includes a Facebook page that is "liked" by more than 11 million Internet users.

The disputed domain name was registered on April 17, 2024 and it does not resolve to an active website.

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.

Notably, the Complainant contends that its CARREFOUR trademarks enjoy wide-spread continuous reputation, with numerous prior UDRP decisions finding that the CARREFOUR trademark is well-known worldwide and distinctive.

The Complainant contends that the disputed domain name is confusingly similar to its CARREFOUR trademarks in that it incorporates the CARREFOUR trademark in its entirety, together with the term "dakar", separated by a hyphen.

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name, and the Complainant asserts the Respondent does not own any CARREFOUR trademarks which could have granted the Respondent with rights in the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name as an individual, business or other organization. Furthermore, the Respondent does not have any license or authorization from the Complainant to use the CARREFOUR trademarks or terms similar thereto in any manner or form.

Before the filing of the Complaint, the Respondent has not used or made preparations to use the disputed domain name in relation to a bona fide offering of goods or services, and the disputed domain name resolves to a standard landing page provided by the registrar. The disputed domain name is inherently likely to mislead Internet users. The Complainant alleges that there is no plausible use of the disputed domain name that would be legitimate, fair and noncommercial.

The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. Since its trademarks are so widely well-known, it is inconceivable that the Respondent ignored the Complainant or its earlier trademark rights. The Respondent necessarily had the Complainant's name and trademarks in mind when registering the disputed domain name. The Respondent's choice of disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks.

The Complainant contends that the association between the Complainant's CARREFOUR trademark and "Dakar", name of the capital city of Senegal, is intrinsically misleading for Internet users and carries a risk of implied affiliation that cannot constitute fair use as it suggests sponsorship or endorsement by the Complainant. This affiliation is more likely in that the Complainant is commercially present in Senegal and in the city of Dakar.

It is highly likely that the Respondent chose the disputed domain name because of its similarity to the Complainant's trademarks, in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's disputed domain name.

The Complainant submits that its trademark registrations significantly predate the registration date of the disputed domain name, and a quick query would have revealed the existence of the Complainant and its trademarks. The Respondent knew or should have known that, when acquiring and using the disputed domain name, that it would be in violation of the Complainant's earlier rights. By maintaining the disputed domain name, the Respondent is preventing the Complainant from reflecting its trademarks in the corresponding domain name.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. In his informal email response dated June 13, 2024 subsequent to the Center's Notification of Respondent Default, the Respondent contends that he is a software developer, and along with other developers, does not intend to pass themselves off as the Complainant. The Respondent notes that the French group Carrefour "already has a very well-known website in Senegal (<https://www.carrefour.sn/>) and therefore no one could pass themselves off as Carrefour in Senegal."

The Respondent further contends that the word "carrefour" is a common noun in French, which means "A place where we find many things" and as a result is used in the name of many businesses around the world. The Respondent listed other websites in Senegal containing the term "carrefour" and alleges that the other websites operate legally in Senegal without identity theft. The Respondent listed other domain names containing the term "carrefour" along with the domain names containing additional terms related to medical services and electronics.

The Respondent contends that there is no content on the website because he had just acquired it. The Respondent states that they are working on the project locally and the site would soon be online.

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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 mark CARREFOUR is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, a hyphen and "dakar", 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 name. The Respondent has not adequately 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.

While the Complainant has shown well-known and distinctive rights in the name and mark CARREFOUR, this Panel acknowledges that "carrefour" is a French common word that the Respondent has claimed means "a place where we find many things". The question for this Panel is whether the evidence shows that the disputed domain name is being genuinely used, or demonstrably intended for use, in connection with the common French word "carrefour" and not to take advantage of the Complainant's CARREFOUR mark for the Respondent's benefit or profit. Mere arguments that a domain name corresponds to a dictionary term will not necessarily suffice. [WIPO Overview 3.0](#), section 2.10.1.

While the Respondent has claimed that the registration is not intended to trade off of the Complainant's mark, the Respondent acknowledges knowledge of the well-known status of the Complainant's mark and its use and the Complainant's presence in Senegal. While the Respondent has stated that other websites in Senegal contain the term "carrefour", the other cited websites include other distinguishing terms apparently unrelated to the Complainant. In this instance, the inclusion of the geographical term "dakar", the capital city of Senegal and where the Complainant also operates its business, is seen as tending to suggest sponsorship or endorsement by the trademark owner, and therefore not considered "fair" use. [WIPO Overview 3.0](#), section 2.5.1.

The Respondent has stated that it had just acquired the disputed domain name and was in the process of working on the project, with the site soon to be online. The Panel acknowledges that the disputed domain name was registered months before the Complaint was filed. However, the Respondent has not provided any evidence of use or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, rather than merely self-serving statements. [WIPO Overview 3.0](#), section 2.2. Combined with the totality of the evidence provided, the Panel finds that the Respondent has not rebutted the Complainant's prima facie case, and that the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute a fair use or legitimate interests.

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 registered the disputed domain name many years after the Complainant acquired trademark rights in the CARREFOUR mark, which numerous panels, including this one, have determined is well-known throughout most of the world. The Respondent in its informal response acknowledged that the CARREFOUR mark and company is well-known in Senegal, the location of the Respondent, and the country wherein the capital city is Dakar, the added term in the disputed domain name. The Complainant operates a website within Senegal at the domain name <carrefour.sn>, which the Respondent was also aware of, as well as its well-known status. The mere inclusion of a geographical term where the Complainant is well-known, would tend to lead to a confusion for Internet users expecting to find the Complainant's website. Although the Respondent had just registered the disputed domain name weeks before the Complaint, it did not provide any credible evidence of its claimed intended use for the disputed domain name.

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.

Although the disputed domain name was registered only a few weeks before the filing of the UDRP Complaint, panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 name 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 distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, along with the Respondent's knowledge of the Complainant's well-known status in the Respondent's country. The Panel 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. Although the Respondent claims to have plans for use of the disputed domain name, it has not provided any evidence of its intended good faith use. Based on the local reputation of the Complainant including in Senegal, where the Respondent is reportedly located and its well-known mark, it is highly likely that the Respondent chose the disputed domain name because of its similarity to the Complainant's trademarks, in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's disputed domain name.

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 <carrefour-dakar.com> be transferred to the Complainant.

/Gary Saposnik/

Gary Saposnik

Sole Panelist

Date: June 26, 2024