

## **ADMINISTRATIVE PANEL DECISION**

### **Carrefour SA v. JEFERSON RODRIGUES BATISTA**

#### **Case No. D2024-1992**

#### **1. The Parties**

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

The Respondent is JEFERSON RODRIGUES BATISTA, Brazil.

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

The disputed domain name <lojascarrefour.fun> 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 May 14, 2024. On May 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 21, 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 24, 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 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2024.

The Center appointed Gill Mansfield as the sole panelist in this matter on June 19, 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 public limited company registered in the trade and companies register of Evry (France) under number 652 014 051 and is a global retailer. It was founded in 1959 and was a pioneer of the concept of the hypermarket. The Complainant operates more than 12 thousand stores in more than 30 different countries. It employs more than 321,000 employees worldwide, has 1.3 billion daily unique visitors to its online stores and in 2021 had a turnover of around EUR 80 billion. The Complainant is listed on the index of the Euronext Paris Stock Exchange and is a Premium Partner of the Paris 2024 Olympic Games.

The Complainant is the owner of numerous registered trademarks worldwide for CARREFOUR, including inter alia the following:

- International trademark registration number 191353 for CARREFOUR (figurative mark) registered on March 9, 1956 in class 3;
- International trademark registration number 351147 for CARREFOUR (figurative mark) registered on October 2, 1968 in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34;
- European Union trademark registration number 005178371 for CARREFOUR (word mark) registered on August 30, 2007 in classes 9, 35, and 38;

The Complainant and its affiliated companies are the owner of domain names that include the word CARREFOUR including <carrefour.eu> registered March 10, 2006, <carrefour.fr> registered June 23, 2005 and <carrefour.com.br> registered January 18, 1997 which are used for business purposes. The Complainant also owns and uses <carrefour.net> which was registered on June 18, 2001 and <carrefour.com> which was registered on October 25, 1995 for corporate purposes.

The disputed domain name was registered on April 10, 2024 and resolves to a parked page with no content.

#### **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:

- (i) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights, in that the disputed domain name incorporates the entirety of the CARREFOUR trademark with the addition of the term "lojas". The addition of the word "lojas", which translates as "stores" in Portuguese, does not sufficiently distinguish the disputed domain name from the Complainant's CARREFOUR trademark. The Complainant submits that consumers may associate the word "lojas" with the Complainant's business activities which could create confusion and reinforce a connection between the disputed domain name and the Complainant's trademark. It also contends that the generic Top-Level Domain ("gTLD") name should be disregarded when assessing similarity.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent's does not have any authorization or license from the Complainant to use the Complainant's CARREFOUR trademark. The Complainant further points to the fact that the disputed domain name resolves to a blank web page and does not resolve to an active website. The Complainant also contends that the disputed domain name is not being used in connection with a bona fide offering of goods or services, and that there is no evidence of any legitimate non-commercial or fair use. The Complainant refers to the absence of a response to the Complaint from the Respondent in support of these contentions. Finally, the Complainant states that the lack of active use combined with the similarity of the disputed domain name to the Complainant's well-known Carrefour trademark raises concerns about potential misuse or intent to attract, for commercial gain, Internet uses by creating a likelihood of confusion.

(iii) The disputed domain name was registered and is being used in bad faith. The Complainant asserts that the global recognition and longstanding use of the CARREFOUR trademark means it is highly implausible that the Respondent was unaware of the Complainant's trademark when registering the disputed domain name. The Complainant also refers to the Respondent's use of a privacy service to hide its identity. The Complainant contends that in the circumstances the "passive holding" of the disputed domain name can be considered evidence of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- (iii) that the disputed domain name has been registered and is 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 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 disputed domain name incorporates the entirety of the CARREFOUR trademark, with the addition of the term "lojas" and the gTLD ".fun". The entirety of the mark 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 "lojas") may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 notes that the applicable gTLD in a domain name is viewed as a standing registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section

1.11.1. This practice of disregarding the gTLD in determining whether a disputed domain name is identical or confusingly similar to the trademark is applied irrespective of the particular gTLD. As such, the “.fun” gTLD in the disputed domain name is disregarded for the purposes of the first element confusing similarity test.

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 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.

In particular, the Respondent is not licensed or authorized by the Complainant to use or to register its trademark. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use, or demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services (on the contrary the disputed domain name resolves to a blank page). There is also no evidence of legitimate noncommercial or fair use of the disputed domain name.

Moreover, the construction of the disputed domain name itself is such to carry a risk of implied affiliation that cannot constitute fair use.

According to paragraph 14(b) of the Rules, the Panel may draw from the lack of response of the Respondent such inferences as it considers appropriate. The Panel is of the view that the lack of response from the Respondent corroborates the absence of any rights or legitimate interests of the Respondent in the disputed domain name.

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.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. WIPO Overview section 3.1.4.

In the present case, the Panel notes that the disputed domain name was registered over 50 years after the first registration of the Complainant's trademark. Having reviewed the available record, the Panel finds that the evidence shows that the Complainant's trademarks are widely-known and have an international reputation, including in Brazil - the reported location of the Respondent – a location in which the Complainant operates its activities. The Panel also finds that the longstanding use of the CARREFOUR trademark combined with its global reputation and recognition, means that it is highly implausible that the Respondent was unaware of the Complainant's trademark when registering the disputed domain name.

The Panel also notes the nature of the disputed domain name, which comprises the word “lojas” (which means “stores” in Portuguese) in addition to the Complainant's trademark. The disputed domain name therefore directly corresponds to the Complainant's recognised field of business activity i.e., retail.

The record shows that the disputed domain name does not resolve to an active website.

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. Given the reputation in the Complainant's trademark, the nature of the disputed domain name (combining the widely-known trademark of the Complainant with the Portuguese word for “stores”) and the failure of the Respondent to submit a response to the Complaint or provide any explanation for the choice of the disputed domain name or any evidence of actual or proposed good faith use, the Panel finds that the disputed domain name was registered in bad faith.

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 <lojas-carrefour.fun> be transferred to the Complainant.

*/Gill Mansfield/*

**Gill Mansfield**

Sole Panelist

Date: July 3, 2024