

## **ADMINISTRATIVE PANEL DECISION**

Carrefour SA v. Koen Berghe  
Case No. D2024-4023

### **1. The Parties**

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

Respondent is Koen Berghe, Belgium.

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

The disputed domain name <carrefourwinkel.website> (the “Domain Name”) 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 October 1, 2024. On October 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from named Respondent (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on October 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 3, 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 Respondent of the Complaint, and the proceedings commenced on October 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 3, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 8, 2024.

The Center appointed Clive L. Elliott K.C. as the sole panelist in this matter on November 18, 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

Complainant is a publicly listed French company founded in 1959. It is a worldwide leader in retail, with the introduction of the hypermarket in 1963, as well as offering travel, banking, insurance and ticketing services. Operating more than 12,000 stores in more than 30 countries worldwide, Complainant is also listed on the Paris Stock Exchange (CAC40).

Complainant is the registered owner of numerous trade marks worldwide in the term “CARREFOUR” (Complainant’s Mark), including but not limited to:

Trade Mark	Jurisdiction	Registration No.	Registration Date	Class
CARREFOUR	International	191353	March 9, 1956	3
CARREFOUR	International	351147	October 2, 1968	1 – 34
CARREFOUR	International	353849	February 28, 1969	35 – 42
CARREFOUR	European Union	005178371	August 30, 2007	9, 35, 38

In addition, Complainant is the owner of a significant number of domain names used for business purposes which are identical to, or comprising Complainant’s Mark, including:

- (a) <carrefour.eu>, registered March 10, 2006;
- (b) <carrefour.fr>, registered June 23, 2005; and
- (c) <carrefour.be>, registered November 25, 2019.

Further, Complainant also owns and uses for corporate purposes:

- (a) <carrefour.net>, registered June 18, 2001; and
- (b) <carrefour.com>, registered October 25, 1995.

Complainant enjoys a widespread continuous reputation as evidenced by numerous UDRP decisions.

According to the publicly available Whois, the Domain Name was registered on September 5, 2024, and as at the date of the Complaint the Domain Name resolved to an error page.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant contends that the Domain Name is confusingly similar to Complainant’s Mark as it contains Complainant’s Mark in its entirety. As well as containing Complainant’s Mark as the dominant element of the Domain Name, the including of the term “winkel”, meaning “store” or “shop” in Dutch, does not diminish the confusing similarity between the Domain Name and Complainant’s Mark. Further, Complainant suggests, that the use of the generic Top-Level Domain “.website” is likely to exacerbate confusion as consumers may incorrectly assume that the Domain Name refers to an official online store of Complainant.

Complainant asserts that there is no evidence that Respondent has been commonly known by the Domain Name, nor has Respondent been authorized by Complainant to use Complainant’s Mark in any trade mark or domain name. The fact the Domain name reverts to an error pages, Complainant submits is evidence that it is not a bona fide offering of goods or services and the Domain Name is being passively held by Respondent.

Complainant points out that with the Domain Name containing Complainant's Mark it is inherently likely to mislead Internet users and carries a high risk of implied affiliation with Complainant, which does not constitute fair use as it is effectively impersonating or suggesting sponsorship or endorsement by Complainant.

The Domain Name, in Complainant's submission, has been registered in bad faith, firstly, because Complainant enjoys a long-lasting worldwide reputation with Complainant's Mark widely well-known, and secondly because Respondent concealed its identity in the Whois record which Complainant submits suggests that Respondent was aware of Complainant at time of registration.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **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 Complainant's Mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Complainant's Mark is recognizable within the Domain Name. That is, the Domain Name contains Complainant's Mark and includes the term "winkel". Accordingly, the Domain Name is confusingly similar to Complainant's Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the above term may be relevant in terms of assessing the second and third elements, the addition of the term does not, in and of itself, prevent a finding of confusing similarity between the 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 Respondent may demonstrate rights or legitimate interests in the 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 respondent lacks rights or legitimate interests, the burden of production on this element shifts to respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name (although the burden of proof always remains on complainant). If respondent fails to come forward with such relevant evidence, complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Based on the record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has failed to rebut Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

In particular, it is alleged that the Domain Name does not resolve to an active website but reverts to an error page. Complainant submits that this indicates that there is no bona fide offering of goods or services and the Domain Name is being passively held by Respondent.

Such activity on its own is not indicative of any rights or legitimate interests. Instead, it carries a risk that the Domain Name may be used to impersonate Complainant. In this regard, the composition of the Domain Name, incorporating Complainant's distinctive trade mark with the term "winkel", which Complainant asserts means "store" or "shop" in Dutch, does not diminish the confusing similarity between the Domain Name and Complainant's Mark. The Panel accepts that this argument has merit and that such composition of the Domain Name carries a risk of implied affiliation and will not be considered as "fair" use.  
[WIPO Overview 3.0](#), section 2.5.1.

Moreover, there is no evidence that Respondent is actually commonly known by the Domain Name. Instead, in the circumstances of this case, it appears the choice of Respondent was intended to falsely suggest an affiliation with Complainant or otherwise mislead Internet users attempting to determine the authenticity of the Domain Name.

Accordingly, 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.

The Panel notes that the composition of the Domain Name, incorporating Complainant's distinctive and long-standing Mark with a term related to its operations, suggests Respondent knew of and sought to take advantage of Complainant's Mark when registering the Domain Name.

Respondent has not put forward any credible explanation for the choice of the Domain Name, and the Panel considers that there is a significant risk that communications originating from or associated with the Domain Name would be misleading or deceptive, falsely suggesting a connection with Complainant.

Furthermore, from the inception of the UDRP, 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; this is especially so as the Domain Name is inherently confusing or deceptive, for the reasons discussed above.

The Panel finds that 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 Domain Name <carrefourwinkel.website> be transferred to Complainant.

*/Clive L. Elliott K.C./*

**Clive L. Elliott K.C.**

Sole Panelist

Date: December 6, 2024