

ADMINISTRATIVE PANEL DECISION

Carrefour SA. v. elivania felix,
Case No. D2024-4220

1. The Parties

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

The Respondent is Elivania Felix, Brazil.

2. The Domain Name and Registrar

The disputed domain name <saldaocarrefour.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 14, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 2024, the Registrar provided the Center via email its verification response. This response includes disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent (Not Disclosed Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 15, 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 October 16, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements set forth in 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 October 18, 2024. In accordance with the Rules, paragraph 5, the due date for the Respondent to submit a Response was November 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 8, 2024.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on November 14, 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 Carrefour SA. Since 1968, the Complainant has been one of the worldwide leaders in retail and one of the pioneers of the concept of hypermarkets in France.

The Complainant additionally offers travel, banking, insurance, and ticketing services. In Brazil, where the Respondent is supposedly located, the Complainant has been present since 1975 and currently owns more than 140 hypermarkets, 50 supermarkets, and 140 express convenience stores at the country.

The Complainant is the owner of the following trademarks:

- a) International trademark CARREFOUR with registration number 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 1 to 34
- b) International trademark CARREFOUR with registration number 353849, registered on February 28, 1969, duly renewed, and designating services in international classes 35 to 42
- c) European Union trademark CARREFOUR with registration number 005178371, registered on August 30, 2007, duly renewed, and designating goods and services in international classes 9, 35 and 38
- d) Brazil – INSTITUTO NACIONAL DA PROPIEDAD INDUSTRIAL (INPI) trademark CARREFOUR with registration number 006314210, registered on May 10, 1976, duly renewed, and designating services in class 38
- e) Brazil – INPI trademark CARREFOUR logo with registration number 006314848, registered on May 10, 1976, duly renewed, and designating services in class 14.

Furthermore, the Complainant owns numerous domain names identical to, or comprising, its trademarks. These domain names are registered in both generic and country code Top-Level Domains, such as <carrefour.com>, <carrefour.fr>, <carrefourmarket.fr> and a dedicated website for Brazilian customers available at the following websites: <grupocarrefourbrasil.com.br> and <carrefour.com.br>.

The disputed domain name was registered on October 3, 2024. At the time of the decision, the disputed domain name resolves to an inactive error page. Historical archives submitted as evidence indicates that the disputed domain name previously resolved to a website displaying the Complainant's products, devices, and the CARREFOUR trademark.

The Respondent was unknown at the time of the original filing of the Complaint and was later confirmed by the Registrar as Elivania Felix, with a postal address in Brazil.

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 the disputed domain name is confusingly similar to its CARREFOUR trademark, notwithstanding the inclusion of the additional Portuguese term "saldao" translated to "sale" or

“discount” in English. It is asserted that the addition of the generic Portuguese term “saldao” is insufficient to render the disputed domain name distinct from the CARREFOUR trademark.

The Complainant asserts that the Respondent has no rights or legitimate interests regarding the disputed domain name. The Complainant argues that the Respondent has not made a legitimate or fair use of the disputed domain name. Furthermore, the Complaint alleges that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its Complaint, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and (iii) 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 Complainant’s trademark. In light of the above, the disputed domain name is deemed to be confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the Portuguese term “saldao”, which translates to “sale” or “discount” in English, may bear on the assessment of the second and third elements, the Panel determines that the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the trademark in accordance with the Policy. [WIPO Overview 3.0](#), section 1.8.

Furthermore, the Panel finds that the generic Top-level Domain (“gTLD”) in the present case “.com”, may be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark, as it is a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1

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 falls on the Complainant, panels have recognized that proving a Respondent’s lack of 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 Respondent’s knowledge or control. In cases, where a Complainant presents a prima facie case that the Respondent lacks rights or

legitimate interests, the burden of production on this element shifts to the Respondent to provide relevant evidence demonstrating rights or legitimate interests in the domain name. The burden of proof always remains with the Complainant. In the event that 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.

According to the Complainant and the evidence presented in this case, it indicates that the Respondent is not affiliated with the Complainant in any way or otherwise authorized or licensed to use the Complainant's trademark, nor to seek registration of a domain name containing the Complainant's trademark. Furthermore, the Respondent is not commonly known by the disputed domain name as an individual, business, or other organization, and has not acquired any trademark or service mark rights in the disputed domain name.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In view of the aforementioned, the Respondent cannot claim to be making any legitimate noncommercial or fair use of the disputed domain name as defined in paragraph 4(c)(iii) of the Policy.

The Complainant presented evidence that the Respondent's intentional mala fide use of the disputed domain name in an attempt to profit from and exploit the Complainant's CARREFOUR trademark through acts that are inherently misleading to Internet users. Furthermore, there is no evidence that the Respondent made a legitimate noncommercial or fair use of the disputed domain name. Moreover, the specific nature of the disputed domain name carries a risk of implied affiliation with the Complainant which cannot constitute fair use and is indicative of bad faith. In addition, the disputed domain name consists of the Complainant's trademark in its entirety, plus a Portuguese term that may be considered related to the Complainant's services, thereby carrying a risk of implied affiliation to the Complainant.

Taking all the aforementioned into account, the Panel determined that the Respondent was aware of the Complainant's trademark and the Complainant's domain names at the time of registering the disputed domain name. Furthermore, the Panel concludes that the Respondent intends to benefit out of the Complainant's trademark, and the goodwill and reputation enjoyed therein. The Complainant puts forth that the Respondent has not, prior to 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. In fact, the disputed domain name resolves to an error page at the time of the original filing of the Complaint, previously hosted a website where the Complainant's devices and the logo were displayed, misleading Internet users into believing that the disputed domain name and its content were directly operated by, authorized by, or affiliated with the Complainant. Such use can never confer rights or legitimate interests.

Based on the aforementioned evidence, the Panel determines that the Respondent's use of the disputed domain name does not constitute a bona fide use nor does it represent a legitimate noncommercial or fair operation of the disputed domain name. The Panel also finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Upon review of the available record, the Panel finds that 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 provided any evidence to refute 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. No evidence has been presented that meets the criteria set forth in the Policy or otherwise.

The Panel finds that 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 finds that the disputed domain name is confusingly similar to the Complainant's trademark, which was registered prior to the disputed domain name. The Panel considers that it is inconceivable that the Respondent was unaware of the existence of the Complainant and its trademarks, when registering the disputed domain name, given the reputation of the Complainant's trademark.

In the present case, the Panel finds that the Respondent registered the disputed domain name in bad faith and that the Respondent was aware of the Complainant and its CARREFOUR trademarks at the time of registration of the disputed domain name. Accordingly, the Respondent necessarily had the Complainant's name and trademarks in mind when registering the disputed domain name. Since the Respondent's choice of the disputed domain name could not have been accidental and must have been influenced by the recognition of the Complainant, as well as its earlier trademarks.

According to the evidence presented in this case the Complainant's trademark registrations significantly predate the registration date of the disputed domain name. In this regard, previous UDRP panels have established that knowledge of the Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name, proves bad faith registration.

The Panel also finds that the use of the disputed domain name is in bad faith. The evidence presented by the Complainant, proves that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Even though the disputed domain name currently does not resolve to any active website and an error page, the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding.

The Panel notes that the disputed domain name, previously resolved to a website impersonating the Complainant. This impersonation consisted of a website that displayed images of devices and the Complainant's official logo. This corroborates the fact that the Respondent had the Complainant's trademark in mind at the time of its registration. Panels have held that the use of a domain name for an illegitimate activity, claimed as impersonation/passing off, constitutes bad faith use. [WIPO Overview 3.0](#), section 3.3.

Given the Respondent's absence of participation in this proceeding, the composition of the disputed domain name, the previous use of the disputed domain name for a website that displayed the Complainant's logo and devices and the current passive holding, the Panel finds that the requirement of registration and use in bad faith is satisfied, according to the Policy, paragraph 4(a)(iii).

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 <saldaocarrefour.com> be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: November 28, 2024