ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Carrefour SA v. showme
Case No. DDO2022-0004

1. The Parties

The Complainant is Carrefour S.A., France, represented by IP Twins, France

The Respondent is showme, United States of America.

2. The Domain Name and Registrar

The disputed domain name <clientaccees-carrefourpass.do> is registered with NIC.DO (the "Registry").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 8, 2022. On November 8, 2022, the Center transmitted by email to NIC.DO a request for registrar verification in connection with the disputed domain name. On November 9, 2022, NIC.DO 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center also sent to the Complainant a communication regarding the Language of the Proceeding. The Complainant filed an amended Complaint on November 15, 2022, and requested English as the Language of the Proceeding.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Domain Name Dispute Resolution Policy for .DO Domain Name Disputes (the "Policy"), the Rules for .DO 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 a) and 4 a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 22, 2022. In accordance with the Rules, paragraph 5 a), the due date for Response was December 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 13, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on January 13, 2023. 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.

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of these proceeding shall be English. Although the language of the proceeding for .DO disputes is Spanish, the Panel notes the circumstances of this case, in particular, the country of origin of the Complainant, the location of the Respondent, the Respondent's absence of objections or comments to the Center's communication about the language of the proceeding, even though communicated in Spanish, and the absence of response to the Complaint.

The Panel notes that the Respondent was given the opportunity to respond in Spanish and that this opportunity remained unused by the Respondent. Consequently, the Panel is convinced that the Respondent will not be prejudiced by the decision being rendered in English.

4. Factual Background

The Complainant is a worldwide leader in retail and a pioneer of the concept of hypermarkets back in 1968.

The Complainant owns several trademarks worldwide, among others, the following:

- International trademark CARREFOUR No. 351147, registered on October 2, 1968, duly renewed, and designating goods in international classes 01 to 34;

- International trademark CARREFOUR No. 353849, registered on February 28, 1969, duly renewed and designating services in international classes 35 to 42;

- French trademark CARREFOUR PASS No. 99780481, registered on March 12, 1999, duly renewed, and designated services in international class 36;

- International trademark CARREFOUR PASS No. 719166, registered on August 18, 1999, duly renewed, and designated services in international class 36.

The disputed domain name was registered on May 4, 2022, and it resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant operates more than 12.000 stores in more than 30 countries worldwide. With more than 384.000 employees worldwide and 1.3 million daily unique visitors in its stores, the Complainant is without a doubt a major and well-known worldwide leader in retail.

The Complainant additionally offers travel, banking, insurance, or ticketing services.

The Complainant is listed on the index of the Paris Stock Exchange (CAC 40) with a turnaround of EUR 76 billion in 2018.

The Complainant submits that the disputed domain name is highly similar to the well-known trademarks CARREFOUR and CARREFOUR PASS. Indeed, both trademarks are reproduced identically within the disputed domain name.

The second part of the disputed domain name is the term “clientaccees”.

The Complainant has found no evidence whatsoever that the Respondent is known by 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.

The Respondent imitates the Complainant’s earlier registered trademarks CARREFOUR and CARREFOUR PASS in the disputed domain name without any license or authorization from the Complainant.

The Respondent has not, before the original filing of the Complaint, used or prepared to use the disputed domain name in relation to a *bona fide* offering of goods or services. On the contrary, the disputed domain name resolves to an error page.

The Complainant submits that the Complainant and its trademarks were so widely well-known, that it is inconceivable that the Respondent ignored the Complainant or its earlier rights on CARREFOUR and CARREFOUR PASS.

The Respondent’s choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant’s trademarks. The Respondent knew or should have known that, when acquiring and using the disputed domain name, they would do so in violation of the Complainant’s earlier rights.

The Complainant contends that the disputed domain name was registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed 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 in respect of the disputed domain name; and
(iii) the disputed domain name has been registered or is being used in bad faith.

Given that the Domain Name Dispute Resolution Policy for .DO Domain Name Disputes is a variation of the Uniform Domain Name Dispute Resolution Policy (“UDRP”), this Panel considers it appropriate to refer, to the extent applicable, to the doctrine reflected in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”).

Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the CARREFOUR and CARREFOUR PASS trademarks on the basis of its multiple trademark registrations in several countries. A trademark registration

provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview 3.0, section 1.2.1).

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name is normally sufficient to establish that the domain name is confusingly similar to a trademark (see section 1.7 of WIPO Overview 3.0). The Respondent's incorporation of the Complainant's mark in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's marks. The addition of the term "clientaccees" as a prefix and a hyphen to the Complainant's trademark CARREFOUR PASS in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's marks. Furthermore, the addition of the country-code Top-Level Domain ("ccTLD") ".do" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test..

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth. Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner.

The Panel also finds that the nature of the disputed domain name carries a risk of Internet user confusion with the Complainant's trademarks. The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, leaving the Complainant's *prima facie* case unrebutted, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered or Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name,

provided that the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that "carrefour pass" is not a common or descriptive term, but a renowned trademark in and to which the Complainant has demonstrated has rights. The disputed domain name reproduces, without any authorization or approval, the Complainant's registered trademarks. Moreover, the disputed domain name is inherently misleading as it reproduces the Complainant's trademarks CARREFOUR and CARREFOUR PASS. In addition, owing to the substantial commercial and financial presence, it is implausible that the Respondent was not aware of the existence of the Complainant's trademarks when registering a domain name that is confusingly similar to the Complainant's trademark. Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the CARREFOUR and CARREFOUR PASS trademarks. The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

Furthermore, the Panel finds that the passive holding of the disputed domain name in the circumstances of the case does not prevent a finding of bad faith registration and use. On the contrary, this Panel agrees with the Complainant's assertion that in the case of domain names containing well-known earlier marks, passive holding can constitute bad faith. Here the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith (see section 3.3 of the WIPO Overview 3.0). In the circumstances, the Panel finds that the passive holding of the disputed domain name disrupts the Complainant's business.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and used the disputed domain name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 <clientaccees-carrefourpass.do> be transferred to the Complainant.

/Daniel Peña/
Daniel Peña
Sole Panelist
Date: January 27, 2023