

## **ADMINISTRATIVE PANEL DECISION**

Carrefour v. Tool Domains Ltd

Case No. DGE2018-0002

### **1. The Parties**

The Complainant is Carrefour of Boulogne-Billancourt, France, represented by Dreyfus & associés, France.

The Respondent is Tool Domains Ltd. of Sofia, Bulgaria.

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

The disputed domain name <carrefour.com.ge> (the “Domain Name”) is registered with Caucasus Online LLC (the .GE Registry).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2018. On November 9, 2018, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the Domain Name. On November 13, 2018, the .GE Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the .GE Policy), the Rules for .GE Domain Name Dispute Resolution Policy (the .GE Rules), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the Supplemental Rules).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 15, 2018. In accordance with the .GE Rules, paragraph 5, the due date for Response was December 5, 2018. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2018.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on December 13, 2018. 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 .GE Rules, paragraph 7.

#### 4. Factual Background

The following facts are undisputed.

The Complainant is a global food retailer with its headquarters in France. The Complainant is mainly known for services related to supermarkets, as well as banking and insurance services. The Complainant was founded in 1958 and operates more than 12,300 physical stores and e-commerce sites in more than 30 countries. The Complainant employs more than 380,000 people worldwide.

The Complainant launched in Georgia, where the Respondent is based, in 2012. In 2017, the Complainant launched its first supermarket in Gldani, Tbilisi. Today, the Complainant has two hypermarkets and six supermarkets in Tbilisi with over 1,500 employees in total. The Complainant owns several trademarks for CARREFOUR – see for example Georgian trademark no. 23772, registered on June 11, 2013.

In 2017, the Complainant generated EUR 88.24 billion in sales.

The Domain Name was registered by the Respondent on June 8, 2018. The Domain Name resolves to a parked page which shows links to third party websites (the “Website”).

#### 5. Parties’ Contentions

##### A. Complainant

Insofar as relevant, the Complainant contends the following.

The Complainant is the owner of numerous registrations for the word mark CARREFOUR, e.g. Georgian trademark no. 23772 registered on June 11, 2013, French trademark no. 1487274 registered on September 2, 1988, European Union trademark no. 008779498 filed on December 23, 2009 and registered on July 13, 2010 and European Union trademark no. 0051788371 filed on June 20, 2006 registered on August 30, 2007 (hereinafter referred together to as the “Trademark”).

In addition, the Complainant is the owner of various domain names, including <carrefour.com>, registered on October 25, 1995, and <carrefour.fr>, registered on June 23, 2005.

The Domain Name reproduces the Trademark in its entirety. Therefore, the Domain Name is identical or confusingly similar to the Trademark.

The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. The Domain Name resolves to a parked page which shows links to third party websites. The sponsored links refer to the Complainant and its field of activities. Displaying a parked page does not constitute a *bona fide* offering of goods or services. In addition, the sponsored links refer to the Complainant and its field of business. These links therefore capitalize on the reputation and goodwill of the Complainant and its Trademark. Furthermore, the Respondent offered the Domain Name for sale on an associated website and to the Complainant. The offering of the Domain Name cannot be considered *bona fide*, since the Respondent is seeking to obtain profit based on the value of the Trademark. The only reason why the Respondent has registered the Domain Name is to seek advantage of the Trademark by selling the Domain Name to the Complainant or to its competitor. Therefore, the Respondent has no rights or legitimate interests in respect to the Domain Name.

It is unlikely that the Respondent was unaware of the Complainant when he registered the Domain Name. The Trademark is a well-known trademark throughout the world, including in Georgia where the Respondent is based. The Respondent registered the Domain Name primarily for the purpose of selling or otherwise transferring the Domain Name to the Complainant. Therefore the Domain Name was registered in bad faith.

In addition, by using the Domain Name, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the Website, by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the Website. The Respondent's use of the Domain Name to direct Internet users to a parking page displaying sponsored links targeting the Complainant and its field of activities – from which the Respondent or a third party is undoubtedly obtaining financial gain – constitutes bad faith.

Finally, a further indication of the Respondent's bad faith use of the Domain Name is the fact that email servers have been configured on the Domain Name and so there is a risk that the Respondent is using, or intending to use, the Domain Name to send fraudulent emails misrepresenting itself as the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the .GE Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant must demonstrate that it has rights in a trademark and, if so, the Domain Name must be shown to be identical or confusingly similar to the Trademark.

The Complainant has shown that it has rights in the Trademark

The Domain Name incorporates the Trademark in its entirety. The addition ".com.ge" is in this case irrelevant or neutral at a minimum.

Thus, the Panel finds that the Domain Name is identical to the Complainant's Trademark.

The Panel is therefore satisfied that the first element of the Policy is met.

### **B. Rights or Legitimate Interests**

The Respondent did not reply to the Complainant's contentions. For that reason, the Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that "Carrefour" is the Respondent's name or that the Respondent is commonly known as "Carrefour". There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked or has ever been permitted in any way by the Complainant to register or use the Complainant's marks, or to apply for or use any domain name incorporating the Trademark.

Furthermore, the use of the Domain Name cannot be considered a *bona fide* offering of goods or services. As brought forward by the Complainant, the pay-per-click links compete with and capitalize on the reputation and goodwill of the Trademark. The use of a domain name to host a parked page comprising of such pay-per-click links does not represent a *bona fide* offering. See in this regard section 2.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”)<sup>1</sup>.

Finally, given the circumstances of this case, the Panel finds that the Respondent’s lack of rights or legitimate interests in the Domain Name may also be inferred by the fact that no response was filed by the Respondent. According to earlier UDRP panels, “non-response is indicative of a lack of interests inconsistent with an attitude of ownership and a belief in the lawfulness of one’s own rights” (see *GA Modefine S.A. and Giorgio Armani S.p.A. v. Yoon-Min Yang*, WIPO Case No. D2005-0090; and *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493).

Therefore, based on the evidence, the Panel is satisfied that the second element of the .GE Policy is met.

### **C. Registered or Used in Bad Faith**

The Panel finds that the Domain Name was registered and is being used in bad faith.

In light of the evidence filed by the Complainant and the absence of a response, the Panel finds that the Complainant’s Trademark and activities are well known throughout the world. Accordingly, in the Panel’s view, the Respondent must have been aware of the Complainant’s existence and rights when it registered the Domain Name.

As discussed in section 6B of this Decision, the Website includes various pay-per-click links. These links refer to the Complainant and its activities. Therefore, the Respondent has intentionally attempted 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 the Respondent’s website or location.

Furthermore, in reply to a cease and desist letter sent by the Complainant, the Respondent tried to offer the Domain Name to the Complainant. Generally speaking, the practice of registering a domain name for subsequent resale (including for a profit) does not by itself support a claim that the Respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). However, the fact that the Domain Name consists solely of the – well-known – trade mark, indicates that the Domain Name was registered for the bad faith purpose of selling it to the Complainant (or its competitor). See WIPO Overview 3.0, section 3.1.1.

Although the lack of a response by the Respondent as such cannot by itself lead to the conclusion that there is use in bad faith, the cumulative circumstances as outlined in this decision are sufficient for the Panel to find that the use of the Domain Name by the Respondent is in bad faith.

In light of the above circumstances, the Panel is satisfied that the third element of the .GE Policy is met.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the Domain Name <carrefour.com.ge> be transferred to the Complainant.

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<sup>1</sup> Although there are some differences between the .GE Policy and the Uniform Domain Name Dispute Resolution Policy (UDRP), case law under the UDRP is relevant for the interpretation of the .GE Policy.

**Willem J. H. Leppink**

Sole Panelist

Date: December 21, 2018