



CEPANI

THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Carrefour / Eric Hagenimana

Case no. 444122 / carrefourfood.be

1. The Parties

1.1. Complainant:

CARREFOUR

Avenue de Paris 93
91300 MASSY
FRANCE

hereinafter referred to as the "**Complainant**"

Represented by:

Mr. Arthur FOURE
Lawyer – IP TWINS
Rue de Turbigo 78
75003 PARIS
France

1.2. Domain name holder:

Mr. **Eric HAGENIMANA**
KG 163ST KG 163ST
000 CITY OF KIGALI
RWANDA

hereinafter referred to as the "**Domain name holder**"

Not represented

2. Domain name

Domain name: **carrefourfood.be**
Registered on: **2 November 2020**

Hereafter referred to as the "domain name".

3. Procedure

On 5 February 2021, the Complainant filed a complaint with CEPANI according to the CEPANI Rules for Domain Name Dispute Resolution (the "Rules") and the Dispute Resolution Policy of DNS Belgium, incorporated in its Terms and conditions for .be domain name registrations (the "Policy"). In its complaint, the Complainant requested the transfer of the Domain Name to the Complainant. The complaint was notified to the Domain name holder and the latter was invited to reply. No response was submitted by the Domain name holder.

On 5 March 2021 and pursuant to Article 7.2 of the CEPANI Rules, CEPANI appointed the Third-Party Decider to settle the dispute involving the aforementioned Domain Name. CEPANI duly received the declaration of independence of the Third-Party Decider. By e-mail dated 5 March 2021 CEPANI informed the Complainant and the Domain name holder of the appointment of the Third-Party Decider. According to art. 10 of the CEPANI Rules, CEPANI transferred on 5 March 2021 the entire file concerning the Complaint to the Third-Party Decider, including the complaint form and 18 annexes.

CEPANI stated in this e-mail of 5 March 2021 that the deliberations should be concluded by 12 March 2021 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by 26 March 2021 at the latest.

On 12 March 2021, conforming to Article 13 of the CEPANI Rules, the deliberations were closed.

As the Domain name holder did not submit a response, no additional extension of the deadline was granted.

4. Factual Background information

The Complainant, Carrefour, is a well-known international wholesale distribution company. The Complainant is active in numerous countries, including in Belgium. The first Belgian store opened in 1969, and in 2017 the Complainant operated near to 800 stores in this country.

The Complainant holds numerous CARREFOUR trademarks, including the following:

- International trademark CARREFOUR No. 353849, inter alia designating the Benelux, registered on 28 February 1969 in classes 35, 36, 37, 38, 39, 40, 41 and 42;
- International trademark CARREFOUR No. 351147, inter alia designating the Benelux, registered on 2 October 1968, in all classes from 1 to 34 included.

The Domain Name has been registered on 2 November 2020. The disputed Domain name resolves to an active page containing a picture of fruits and herbs, and the terms "Carrefour Food". No information is provided concerning the Domain name holder or its activities.

5. Position of the parties

5.1. Position of the Complainant

In summary, the Complainant argues:

- that the Complainant is a famous worldwide leader in retail;
- that it has many CARREFOUR trademarks valid in many countries including Belgium, and registered for many types of goods and services (including food and food supply);
- that its reputation has already been confirmed in several decisions (WIPO case No. D2019-2895, WIPO case No. D2019-2610, CEPANI Case No. 44494);
- that the Domain name is confusingly similar to its trademark, as it reproduces Complainant's trademark CARREFOUR in attack position, together with the generic term "food" (the Complainant submits that the addition of this generic term reinforces the risk of confusion as selling food and food supplies is one of the main businesses of the Complainant);
- that the Domain name holder has no legitimate interest in the Domain name; and
- that the Domain name holder registered and used the Domain Name in bad faith.

5.2. Position of the Domain name holder

The Domain name holder did not submit any response.

6. Discussion and findings

Pursuant to Article 16.1 of the *CEPANI rules for domain name dispute resolution*, the Third-Party Decider shall rule on domain name disputes with due regard for the Policy and the CEPANI Rules for domain name dispute resolution.

Pursuant to Article 10b (1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must provide evidence of the following:

- *"the Domain name holder is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and*
- *the Domain name holder has no rights or legitimate interests in the domain name; and*
- *the Domain name holder's domain name has been registered or is being used in bad faith."*

6.1. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

It is undisputed that the Complainant has rights in the trademark, trade name and company name CARREFOUR.

According to the Cepani case-law, the suffix "be" is not relevant for establishing the identity or the similarity between a domain name and a trademark.

The relevant part of the Domain Name "Carrefourfood" shows similarity to the complainant's trademark.

In many WIPO decisions, Panels considered that the incorporation of a well-known trademark in its entirety may be sufficient to establish that the domain name is identical or confusingly similar to the Complainant's trademark (WIPO Case No. D2019-0670; WIPO Case No. D2011-1627; WIPO Case No. D2010-1059; WIPO Case No. D2000-0113).

Furthermore, we agree with the Complainant's argument that adding "food" after its trademark "carrefour" does not avoid the risk of confusion and that, on the contrary, it reinforces such risk as it refers to goods and services for which the Complainant's trademark has been registered.

Therefore, the Third-Party Decider finds that the Domain Name is confusingly similar to the Complainant's CARREFOUR trademark.

It follows that the first condition is met.

6.2. The Domain name holder has no right or legitimate interests in the Domain Name

According to Article 10 (b) 1 of the Policy, the Complainant has to prove that the Domain name holder has no rights or legitimate interests to the Domain Name. Considering the difficulty of proving such a negative fact ("negativa non sunt probanda"), this burden of proof is considered to be satisfied when, taking into account all the facts of the case, the Complainant could credibly state that he is unaware of any reason or circumstance which could be indicative of such a right or legitimate interest (see for instance CEPANI case No. 44039; CEPANI case No. 44030; CEPANI case No. 44013).

Art. 10 (b) 3 of the Policy provides that the Domain name holder can prove that he has a right or a legitimate interest to the Domain name due to the following circumstances: "prior of any notice of the dispute, he used the domain or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; he has been commonly known by the domain name, even if he has acquired no trademark; he is making a legitimate and non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark, trade name, social name or

corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue."

However, the Domain name holder has not submitted any response, and has therefore not provided any such evidence.

In the case at hand, the Third-Party Decider considers that the Complainant has sufficiently proven that the Domain name holder has no rights or legitimate interests to the Domain name: the Complainant makes it plausible that the Domain name holder has no rights or legitimate interests in the Domain Name, and the Complainant's assertions remain undisputed by the Domain name holder.

It follows that the second condition is also met.

6.3. The Domain name holder's Domain Name has been registered or is being used in bad faith

The evidence of a registration or use in bad faith of a domain name can be provided by the circumstances mentioned in the non-exhaustive list under art. 10 (b) 2 of the Policy, i.e.:

- "circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the company name or to a competitor of the complainant for a price that exceeds the costs that the registrant can show are directly related to the acquisition of the domain name;
- the domain name was registered in order to prevent the owner of a company name to use the domain name and that the Domain name holder has engaged in a pattern of such conduct;
- the domain name was registered primarily for the purpose of disrupting the business of a competitor;
- the domain name was intentionally used to attract, for commercial gain, internet-users to the Domain name holder's website or other on-line location, by creating a likelihood of confusion with the complainant's company name;
- the Domain name holder registered one or more personal names without the existence of a demonstrable link between the Domain name holder and the registered domain names."

The circumstances enlisted above are not exclusive but merely intended to assist the parties in establishing the strengths or weaknesses of their position (WIPO Case No. D2000-1228; CEPANI case No. 44010; CEPANI Case No. 44002).

Bad faith must be proven but may also be derived from reasonable assumptions in certain circumstances, for example when the domain name consists of a well-known trademark. (CEPANI Case No. 44233; CEPANI Case No. 44080; CEPANI Case No. 44494).

In the case at hand, the Complainant raises the following arguments to demonstrate that the Domain Name has been registered or used in bad faith:

- Given the notoriety of Carrefour and the facts of the case, the choice of the Domain name has not been accidental. The Domain name has been chosen to create confusion and create Internet traffic towards the website.
- A trademark research would immediately have shown the interest of the Complainant in the Domain Name.
- The Complainant's trademark registration significantly predates the registration of the Domain name.
- The Domain Name resolves to an active page containing a picture of food, which creates more confusion given that food supply is one of the core activities of the Complainant.

As already stated in a previous CEPANI Decision No. 44494 involving the Complainant, it must be noted that the Complainant's CARREFOUR trademark is not inherently distinctive as it corresponds to a dictionary term, "carrefour" meaning "crossroads" or "intersection" in French. The Domain Name may therefore have inherent value which is not necessarily linked to the Complainant. However, it must also be admitted that the Complainant shows that its CARREFOUR trademark enjoys a considerable international reputation, especially in Belgium. The Third-Party decider tends therefore to agree with the Complainant regarding the "non-accidental" character of the registration and the fact that the association of the word "carrefour" and "food" has been voluntarily made in order to create confusion and to illegitimately attract internet-users.


Furthermore, it must be stressed that the assertion of bad faith is not disputed by the Domain name holder since he did not submit any response.

It follows that the third condition is also met.

7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-Party Decider hereby rules that the domain name registration for the "**carrefourfood.be**" domain name **is to be transferred to the complainant.**

Brussels, 25 March 2021.



Philippe LAURENT
The Third-party Decider