

DECISION OF THE THIRD-PARTY DECIDER

Carrefour / Catchtiger BV - Domeintijger

Case No. 44494 CEPANI: carrefour.be

1. Parties

1.1. Complainant:

CARREFOUR
Avenue de Paris 93
91300 MASSY
FRANCE

Represented by:

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

1.2. Domain name holder:

CATCHTIGER BV
Mr. Lukas MEYERDING
Keizerstraat 15
4811 HL BREDA
THE NETHERLANDS

Previously:
DOMEINTIJGER
Mr. Tijmen VAN DIJL
Willemstraat 15
4811AJ BREDA
THE NETHERLANDS

2. Domain name

Domain name: **"carrefour.be"**
Registered on: 25 November 2019

Hereafter the "Domain Name".

3. Procedural history

On 12 March 2020, Complainant filed a Complaint with CEPANI requesting that the Disputed Domain Name be transferred. On 23 March 2020, CEPANI noted that both Parties agree to have the present procedure further conducted in English pursuant to Article 12.1 of the Rules for Domain Name Dispute Resolution of CEPANI (the "Rules").

On 21 April 2020, CEPANI appointed Flip Petillion as Third-Party Decider. On 28 April 2020, the deliberations have been closed. No response was received.

In the absence of a Response, the Third-Party Decider shall render his decision based on the Complaint, Article 10 of the "Terms and conditions for .be domain name registrations" of DNS.be, entitled "Dispute resolution policy" (the "Policy"), and the Rules.

4. Elements of fact

The Complainant, Carrefour, is an 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 25 November 2019. According to the evidence provided by the Complainant, the Domain Name resolved to a web page of the Respondent mentioning the following:

"DOMAIN NOT FOUND – This domain auction could not be found. This auction is already closed, or never existed. Within a few seconds you will be redirected to our page with all active auctions."

However, the evidence is undated and does not show the address bar of the web browser, so it is not possible to verify that the web page was indeed linked to the Domain Name.

The Complainant also provides evidence of correspondence with its representative regarding negotiations to buy the Domain Name.

5. Parties contentions

5.1. Complainant

In summary, the Complainant requests that the Domain Name be transferred. The Complainant argues that the Domain Name is identical to its CARREFOUR trademarks, trade name, company name and logo. The Complainant further claims that the Respondent has no rights or legitimate interests in the Domain Name. Finally, the Complainant argues that the Respondent registered and used the Domain Name in bad faith. According to the Complainant, the Domain Name has been registered with the Complainant and its trademarks in mind. The Domain Name prevents the Complainant to reflect its rights in a corresponding domain name. The Domain Name has also been offered for sale at a high price, which shows the Respondent's intention to take advantage of the reputation of the Complainant's trademarks. The fact that the Domain Name is identical to the Complainant's trademarks carries a risk of confusing Internet users.

5.2. Respondent

The Respondent did not reply.

6. Discussion and findings

Article 16.1 of the Rules instructs the Third-Party Decider as to the principles the Third-Party Decider is to use in determining the dispute: "*The Third-Party Decider shall decide following the Parties views and in accordance with dispute resolution policy of DNS.be, the registration agreement and following the provisions of the present Rules.*"

By virtue of Article 10, b, 1 of the Policy, the Complainant must prove each of the following:

- the Respondent's Domain Name is identical or confusingly similar to a trademark, a trade name, a registered name or a company 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 Respondent has no rights or legitimate interests in the Domain Name; and
- the Respondent's Domain Name has been registered or is being used in bad faith.

6.1. Identity or confusing similarity

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

In the Third-Party Decider's view, the domain name extension ".be" can be disregarded in determining identity or confusing similarity. Therefore, the Third-Party Decider finds that the Domain Name is identical to the Complainant's CARREFOUR trademark, trade name and company name.

It follows that the first element of the Policy has been met.

6.2. Rights or legitimate interests

Pursuant to Article 10, b, 1, ii of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name. It is established case law that it is sufficient for the Complainant to make it plausible that the Respondent has no rights or legitimate interests in the Domain Name to shift the burden of proof to the Respondent.

There is no evidence available showing that the Respondent would have been commonly known by the Domain Name.

According to the Complainant, the Respondent does not prove it used or made any preparations to use the Domain Name in connection with a bona fide offering of goods or services. The Complainant provides evidence of e-mail correspondence with its representative, which seems to show that the Respondent offered the Domain Name for sale to the Complainant for an amount of 20.000 EUR. In the Complainant's view, this shows that the Respondent's intent was to take advantage of the reputation of the Complainant and its trademarks to sell the Domain Name to the Complainant at a price which is far higher than the normal price for a domain name.

In view of the above, the Third-Party Decider finds that the Complainant makes it plausible that the Respondent has no rights or legitimate interests in the Domain Name. The burden of proof on this element thus shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name.

As the Respondent did not file any response to the Complaint, the Complainant's assertions remain undisputed and the Third-Party Decider considers that the Respondent did not demonstrate any rights or legitimate interests in the Domain Name.

It must therefore be concluded that the second element under Article 10, b, 1, ii of the Policy is also fulfilled.

6.3. Registration or use in bad faith

In order to meet the third element of Article 10, b, 1 of the Policy, the Complainant must prove that the Respondent registered or used the Domain Name in bad faith.

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. See e.g. CEPANI Case No. 44233, 5 July 2011 (piperheidsieck.be); CEPANI Case No. 44080, 31 March 2006 (skype.be).

As stated above, the Complainant claims that the Respondent's intent was to take advantage of the reputation of the Complainant and its trademarks to sell the Domain Name to the Complainant at a price which is far higher than the normal price for a domain name.

The Third-Party Decider notes 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.

It appears from the case file that the Respondent's business is organizing auctions to buy and sell domain names. In these circumstances, the Respondent may have had reasons to register the Domain Name without specifically targeting the Complainant. The Third-Party Decider notes that the e-mail correspondence provided by the Complainant indeed suggests that the Respondent organized an auction for the sale the Domain Name.

That being said, in the Third-Party Decider's opinion, the Complainant shows that its CARREFOUR trademark enjoys a considerable international reputation, and especially in Belgium. As a professional in domain name transactions, the Respondent must have been aware of the Complainant and its rights, and the fact that this would increase the value of the Domain Name. The point is all stronger given that the Domain Name is registered under the ".be" extension.

Moreover, according to the provided e-mail correspondence, the Respondent took the initiative to renew the contact with the Complainant after the winning bidder failed to pay for the Domain Name. The Complainant offered to pay 10.000 EUR, but the Respondent requested an amount of 20.000 EUR. Given the reputation of the Complainant and its trademarks, the Third-Party Decider finds that this behavior would amount to bad faith use of the Domain Name, as the Respondent tried to capitalize on the Complainant's rights in the name CARREFOUR.

As there has not been any response from the Respondent, the overall circumstances seem to indicate with a reasonable degree of certainty the existence of bad faith concerning the registration or at least the use of the Domain Name.

Therefore, the Third-Party Decider finds that the third element under Article 10, b, 1, iii of the Policy is also fulfilled.

7. Decision

Pursuant to Article 10, e, of the Policy, the Third-Party Decider grants the request of the Complainant that the Domain Name “**carrefour.be**” be transferred to the Complainant.

Brussels, 12 May 2020.



Flip Petillion
Third-party decider