

DECISION OF THE THIRD-PARTY DECIDER

Carrefour / Hui Chen (jymachine)

Case no. 444102 / carrefour-express.be

1. The parties

1.1. Complainant: Carrefour

With registered offices at 93 Avenue de Paris, 91300 Massy,
France;

hereinafter referred to as "the Complainant"

Represented by:

Mtre. Arthur Fouré, IP Twins, 78 Rue de Turbigo, 75003 Paris,
France.

1.2. Domain name holder: Hui Chen

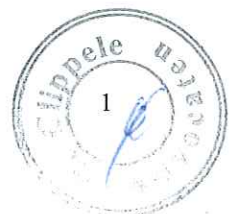
With address Tangzhen Puxi 302, 201201 Shanghai,
China;

hereinafter referred to as "the Licensee"

2. Domain name

Domain name: **"carrefour-express.be"**
Registered on: April 8th 2020

Hereafter referred to as "the Domain Name"



3. Procedure

- 3.1. On July 8th 2020 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").

The Complainant requests that the Domain Name shall be transferred to the Complainant.

The complaint was notified to the Licensee and the latter was invited to reply.

No response was submitted by the Licensee.

- 3.2. On August 10th 2020 and pursuant to Article 7.2 of the CEPANI Rules for Domain Name Dispute Resolution, 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 August 10th 2020 CEPANI informed the Complainant and the Licensee of the appointment of the Third-Party Decider.

CEPANI stated in this e-mail that the deliberations should be concluded by August 17th 2020 and that the Third-Party Decider must inform the CEPANI Secretariat of his decision by August 31th 2020 at the latest.

- 3.3. On August 17th 2020 and according to Article 13 of the CEPANI Rules for Domain Name Dispute Resolution, the deliberations were closed;

As the Licensee did not submit a response on the Complainant's arguments and motifs, there was no need for the Complainant to request permission from the Third-Party Decider for an additional extension of the deadline in order to submit a rebuttal.

- 3.4. According to art. 10 of the CEPANI Rules, CEPANI transferred on August 10th 2020 the entire file concerning the Complaint to the Third-Party Decider, including the complaint form and annexes (not enumerated), namely:

- Annexe 1. Extract from DNS Belgium with regard to the domain name carrefour-express.be
- Annexe 2. Extract WIPO Global Brand Database dd. March 3th, 2020 carrefour
- Annexe 3. EUTM file information extract 005178371



- Annexe 4. EUTM file information extract 008779498
- Annexe 5. EUTM file information extract 008870602
- Annexe 6. WIPO Arbitral decision D2019-2895 dd. January 16, 2020 in the matter Carrefour v. Contract Privacy Inc.
- Annexe 7. WIPO Arbitral decision D2019-2610 dd. December 10 16, 2020 in the matter Carrefour v. Perfect Privacy LLC.
- Annexe 8. AFNIC Arbitral decision 2018-000453 dd. January 10, 2019
- Annexe 9. Facebook page carrefour
(<https://www.facebook.com/carrefour>)
- Annexe 10. Extract from DNS Belgium with regard to the domain name carrefour.be
- Annexe 11. Extract from the company register
- Annexe 12. Extract WIPO Global Brand Database dd. June 12th, 2020 Jymachine
- Annexe 13. Websearch 'www.carrefour-express.be'
- Annexe 14. Google search 'Carrefour'

3.5. On basis of the file, the Third-Party Decider concludes that CEPANI has adhered to the Rules in administering this case.

3.6. In application of Article 12.1 and in the absence of opposition, Carrefour adhered to the suggestion, the Third-Party Decider finds that the procedure should be carried on in English, the most appropriate language in this matter considering the identity of the parties and the subject matter.

4. Factual Background information

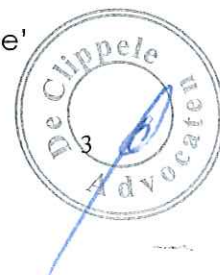
4.1. The Complainant is a French company active in the retail of food and non-food products. Carrefour is well known in the Belgian retail market with the Carrefour supermarkets and Carrefour-express shops in various cities and local places.

The Complainant has a registered trademark 'Carrefour-Express' (EUIPO 008870602; date of registration October 12, 2010 with expiration date January 26, 2030). The European trademark is general used in the market indicating the nearby carrefour shops.

4.2. The Licensee is a Chinese individual/company with unknown activities

The Licensee registered the Domain Name on April 8th 2020. WIPO Database search shows no brand use on 'Jymachine'.

4.3. The Domain Name is not being used. A websearch on 'carrefour-express.be' gives no result.



5. Position of the parties

5.1. Position of the Complainant

5.1.1. The Complainant's argumentation in its request is mainly based on its name and notoriety, and in particular the trademarks 'Carrefour' and on the absence of a legitimate interest in the Domain name for the Licensee.

Complainant is already holder of the trademark 'Carrefour' since 2007. He claims that the Domain Name is confusingly similar to the trademark that is used and well-known in the market. In support thereof the complainant refers to arbitral decisions (OMPI, D2019-285 and OMP, D2019-2610).

Complainant requests the Third-Party Decider to order the transfer of the Domain Name considering the conflict and alleged misuse of the company name, logo and trademark of the Complainant. The Complainant therefore applies to Article 10 of the Policy.

5.1.2. Arguments on the merits

The Complainant argues in its request that the conditions of Art. 10 (b)1 of the Policy are met since:

- (i) the Domain Name is identical and/or confusingly similar to the company name, logo or trademark of the Complainant;
- (ii) the Licensee has no rights or legitimate interests in the Domain name;
- (iii) the Licensee's Domain Name has been registered or is being used in bad faith.

5.1.3. The Complainant did offer the possibility to the Licensee to voluntarily proceed with the execution of the relief sought within 7 calendar days. The Licensee did not agree nor react to the possibility of transfer.

The Complainant states that no other procedure to the Domain Name has been introduced or is pending, and there is no obstruction for the Third-Party Decider to take and decide on the matter.

According to article 10 (l) of the Policy "*The dispute resolution fee is payable by the complainant.*" The dispute resolution fee has been deposited.



5.2. Position of the Licensee

The Licensee did not submit a Response within 21 calendar days as from the date of commencement of the proceeding (Art. 6.1 of the Rules).

As a consequence, the Third-Party Decider shall decide the dispute on the basis of the Complaint (Art. 6.4 of the Rules).

6. Discussion and findings

Pursuant to Article 11.1 of the CEPANI Rules 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 .be domain name registrations operated by DNS Belgium, the Complainant must provide evidence of the following:

“

- (i) *the licensee's domain name is identical or confusingly similar to a trademark, a tradename, 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*
- (ii) *the licensee has no rights or legitimate interests in the domain name; and*
- (iii) *the licensee's domain name has been registered or is being used in bad faith. ”*



6.1. The Domain Name is identical or confusingly similar to the company name and/or Trademark in which the Complainant has rights

According to the Cepina case-law, the suffix "be" is not relevant for establishing the identity or the similarity between a domain name and – in this case – a company name (see amongst other cases nr. 44003 *Pernod Ricard / Worldsites Internet Networks*, April 11th 2001 and nr. 44059 *Province du Brabant wallon / Marie-Claire Suigne*, April 28th 2005).

Therefore the Domain Name 'Carrefour-express' shows similarity to the company name of Complainant 'Carrefour'.

The company with the name "Carrefour" has been established by Complainant in 1959, while the Domain Name has only been registered on April 8, 2020. The company name is no doubt well-known in the market. The Complainant also refers to its trademark 'Carrefour' and Complainant is holder of the domain name "carrefour.be" since November 25, 2019.

The Third-Party Decider therefore considers that the Complainant has sufficiently proven to have rights on the name Carrefour.

The Third-Party Decider accepts that one may consider that there is some similarity between the company name / logo/ trademark 'Carrefour' and the Domain Name 'Carrefour-express'. However the Third-Party Decider believes that that similarity is not decisive and therefore does not accept the argument. The word carrefour is also a general term with a transferable meaning; 'crossroads'; intersection, junction.

Nevertheless, other than the Complainant, the third party Decider refers to the trademark 'Carrefour-express' (EUIPO Trademark 008870602) registered on October 15, 2010 and still in place till January 26, 2030 held by the Complainant. The Domain-Name is identical to this trademark.

As a consequence the Third-Party Decider concludes that the first condition is met.



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

6.2.1 According to Article 10 (b) 1 of the Policy the Complainant has to prove that the Licensee 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 amongst other cases nr. 44039 *Consitex S.A. / Piero Gerolanda*, November 21st 2003; nr. 44030 *S.A. Le Petit-Fils de L.U. Chopard & Cie / Joël GLECKER (OROLOGIO NV)*, February 17th 2003 and nr. 44013 *Guinness UDV North America Inc. / Olivier Noël*, February 7th 2002).

Art. 10 (b) 3 of the Policy however provides that the Licensee can prove that he has a right or a legitimate interest to the Domain name due to the following circumstances:

- *"prior to 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."*

6.2.2. In the case at hand the Third-Party Decider considers that the Complainant has sufficiently proven that the Licensee has no rights or legitimate interests to the Domain name.

From the argumentation and evidence provided by Complainant follow that the circumstances of the (non-exhaustive) list above are not applicable:

- the Domain Name is not being used in connection with a bona fide offering of goods or services nor did the Licensee made demonstrable preparations for such use
- the Licensee is not commonly known by the domain name



The Licensee is not known under the name Carrefour-Express. There seems to be no link between the Licensee and the name Carrefour-Express nor to any activity related to cars.

- the Licensee is not making a legitimate and non-commercial or fair use of the Domain Name

The Third-Party Decider therefore concludes that the second condition is also met.

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

6.3.1. 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 licensee 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 licensee's website or other on-line location, by creating a likelihood of confusion with the complainant 's company name;*
- *the licensee registered one or more personal names without the existence of a demonstrable link between the licensee and the registered domain names."*



Bad faith can also be presumed when other elements of facts or circumstances exclude any reasonable doubt in this respect. Indeed, Article 10 (b) 2 of the Policy sets out, without limitation, certain circumstances which, if found, are deemed to be evidence of use and registration in bad faith. The circumstances enlisted are not exclusive but merely intended to assist the parties in establishing the strengths or weaknesses of their position (WIPO Case nr. D2000-1228 *Clerical Medical Investment Group Limited / Clericalmedical.com (Clerical & Medical Services Agency)*, November 28th 2000; CEPANI case nr. 44010 *Red Bull GmbH / Kees Rasenberg*, October 25th 2001, CEPANI Case nr. 44002 *Vlaamse Radio en Televisieomroep / Securax BVBA*, March 5th 2001). Bad Faith is an element in fact and may therefore be evidenced by all means, including presumptions and circumstances that indicate with reasonable degree of certainty, the existence of bad faith. The assertion of bad faith is not disputed by the Licensee since he did not submit any Response.

6.3.2. In the case at hand the Complainant arguments that following circumstances demonstrate that the Domain Name has been registered or used in bad faith:

- The notoriety of Carrefour;
- Trademark research would immediately have shown the interest of the Complainant in the Domain Name.

The Domain Name is unused. The Licensee is active as a domain name seller. This indeed indicates that the Licensee is making an illegitimate and/or commercial and/or unfair use of domain names, with the intent for commercial gain.

An additional indication of bad faith is the fact that the Licensee has no use or use planned of the Domain name registered April 8, 2020 (ref. case nr. 4090 *Hooster SARL / Wikos Sprrl, 29 August 2006, Lieben and Petillion, oc 86*). Clearly the Chinese Licensee shows no interest in the Domain name and or in the .be extension or market;

The Third-Party Decider is therefore of the opinion that the Complainant has provided sufficient evidence demonstrating that the registration of the domain name was made in bad faith.

As a result, the Third-Party Decider concludes 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 Belgium*, the Third-Party Decider hereby rules that the domain name registration for the "**carrefour-express.be**" domain name is to be transferred to the complainant.

Antwerp, August 24th 2020

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The Third-party decider

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