# Panel Decision for dispute CAC-ADREU-008087

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| Case number | **CAC-ADREU-008087** |
| Time of filing | **2021-04-01 10:41:00** |
| Domain names | **carrafour.eu** |

## Case administrator

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| Organization | **Denisa Bilík (CAC) (Case admin)** |

## Complainant

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| Organization | **Carrefour** |

## Respondent

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| Name | **Tomasz Kurlenko** |

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is Carrefour, a company registered under the law of France. It is one of the largest companies recognised worldwide, operating in over 30 countries, offering to the market a wide range of services related to retail, but also in banking and insurance. Complainant operates in more than 12.000 stores, employs over 380.000 people and on daily basis provides services for 1.3 million people. Compliant is listed in the Paris Stock Exchange, and at the end of 2018, Complainant achieved a turnaround at the rate of 76 billion EURO.
The Respondent – Mr. Tomasz Kurlenko – is a physical person, domiciled in Poland in Krzepice (42-160) ul. Słoneczna 11. In the herein case it was not established whether If the Respondent operates as an entrepreneur or conducts any kind of business activity in other forms. The disputed domain <carrafour.eu> was registered on 5 October 2020. Under the disputed domain there are no particular information indicating on the Respondent nor his business activity. It is a dynamically generated website that includes third-party advertising.
On 14 December 2020 the Complainant filed its Complaint, and the receipt of the Complaint was acknowledged by the ADR on 15 December 2020. ADR issued a request for EURid verification on 15 December 2020, due to several issues that needed to be verified:
that the specified domain name(s) is / are registered with the above mentioned Registrar.
that the Respondent is the current registrant of the domain name(s).
full contact details (i.e., postal addresses, telephone number(s), facsimile number(s), e-mail address(es) that are available in your WHOIS database for the domain name registrant, technical contact, administrative contact and billing contact, for the above domain name(s).
that the domain name(s) will remain locked during the pending ADR Proceeding;
Apart from that, Complainant was requested to indicate the specific language of the registration agreement as used by the registrant for each domain name.
On 17 December 2020 Complainant send to the ADR a communication in which it provided all of the requested information, that allowed ADR to commence the proceedings in the case ta hand on 22 December 2020. As for the language of the proceedings, English language was selected.
The Respondent did not respond to the communication, and failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR.
On 3 march 2021 the Panelist, having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence had been appointed.

A. COMPLAINANT

The Complainant underlines that it is a well-known company, operating in many countries with a renowned position worldwide in terms

of providing retail services.
Complainant has indicated on the following claims towards the Respondent in the case at hand:
1) The registered domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law;
2) The domain name has been registered by its holder without rights or legitimate interest in the name;
3) The domain name has been registered or is being used in bad faith.
Addressing the first claim, the Complainant indicated that is the owner of many trademarks rights, registered under national and international jurisdictions, containing the name or comprising of 'carrefour' well before the registration of the disputed domain name 'carrafour.eu'. Complainant specifically indicated on the following:
CARREFOUR EUTM 5178371 registered on 30 August 2007, for goods and services in international classes (Nice Classification) 9, 35 and 38;
CARREFOUR EUTM 8779498 registered on 13 July 2010, for goods and services in international classes (Nice Classification) 35
The Complainant submits, that the earlier trademarks CARREFOUR enjoy a wide-spread continuous reputation. In support of that claim, Complainant indicated on a several decisions issued in other proceedings in relation to that particular designation, where the reputation and notoriety of that designation was recognised.
Moreover, in support to the notoriety and popularity of his designations and the name carrefour in relation to his enterprise Complainant has indicated that the page on the social network service FACEBOOK had, at the moment of submission of the complaint in the herein case over 11 million "likes".
Apart from that, Complainant has underlined that it already is an owner of almost identical domain 'carrefour.eu' registered on that contains its actual legal company name,
The Complainant is also the owner of <carrefour.eu> registered on 10 March 2006. CARREFOUR is also the legal company name of the Complainant.
The Complainant has become aware of the fact that the Respondent has registered an almost identical domain name 'carrafour.eu'. Disputed domain is highly similar to the name of Complainant earlier domain name, his renowned trademarks and to his legal name. Complainant indicated that the only difference between his designations and the disputed domain resides in the fifth letter of the where there is the letter 'e' of the earlier rights of the Complainant being replaced by the letter 'a' in the disputed domain. Differences between those names are to be considered minimal, irrelevant to the assessment of the matter in the case at hand.
Complainant indicated, that the disputed domain name is similar to the point of confusion with the earlier rights of the Complainant, which may result in, inter alia, potential association or affiliation of the disputed domain name with the Complainant.
In accordance to the second claim, Complainant submitted that the Respondent has no right or legitimate interest in respect of the disputed domain name.
In that regard, the Complainant indicated that due to his best knowledge Respondent was not well known or even recognised either locally, nationally or internationally as a provider of certain goods or services under the disputed domain name. Short period of time between registration to the filing of the complaint did not allow the respondent or his domain to acquire popularity or recognition of the Respondent or his domain name.
Moreover, the Complainant indicated, that the search of any kind of earlier rights of the Respondent to the disputed domain name, derived from such as rights from earlier trademarks, rights to the business name did not revealed any such Respondents rights.
In the opinion of the Complainant, Respondent infringed earlier rights to the names carrefour by imitating his domain to the earlier names. Complainant argued that the Respondent had no authorisation to do that and imitating the earlier names by the respondent is a proof of lack of legitimate interest.
Furthermore, Complainant indicated that the Respondent did not make any kind of preparations nor did he use the carrafour as a designation apart from disputed domain earlier. The disputed domain name resolves to a parking page of pay-per-click commercial links.
Complainant also pointed out, that the burden of proof to establish any kind of earlier rights to the disputed domain name resides on the Respondent. Due to the evidences provided by the Complainant, he argued that it is safe to assume that the Respondent did not have any kind of rights to the name carrafour, nor legitimate interests in registration.
In accordance to the third claim, Complainant contended that the Respondent has registered and is using the disputed domain name in bad faith.
In support of that argument, the Complainant has referred to the wide popularity of his designations and the name carrefour and its owners, which without a doubt was also known to the Respondent. In the Complainant opinion, it was apparent that the Respondent intended to register at least similar name as his domain and his choice must have been influenced by Complainants earlier rights.
Regardless of that, in the case at hand, in Complainant's opinion, Respondent knew or should have known that registering his domain name infringes earlier Complainants rights.
Complainant indicated that in his opinion, the Respondent intended to use the domain in expectation for Internet users searching for the Complainant's services and products would instead (either by mistake or intentionally) come across the site under the disputed domain.
In Complainants opinion the Respondent is using the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks.
Moreover, Complainant argued that the lack of proper earlier research that without a doubt would have revealed earlier rights to the

trademark to the Respondent. This proves, in the opinion of the Complainant, that the Respondent acted in bad faith.
Complainant also indicated that by maintaining the domain name, the Respondent prevents the Complainant from reflecting its trademarks in the corresponding domain name.
Apart from that – the Complainant indicated that the Respondent has already been a party to the proceedings in similar cases, and in each of them, his domain names were reproducing the well-known trademarks and designations or constituted its reproductions.
Complainant contended also that the disputed domain name was registered and arise being used in bad faith by the Respondent. This, in the opinion of the Complainant, should have been taken into consideration by the Panel in all of the presented circumstances, not limiting to the actual usage of the disputed domain name in bad faith, but the bad faith of the Respondent registering the disputed domain name.

B. RESPONDENT

The Respondent has not replied.

DISCUSSION AND FINDINGS

In accordance to the material collected in the case at hand, it was proven without a doubt that the Complainant had earlier rights to the name Carrefour than the date of the registration of the disputed domain. Moreover, based on the Complainant's evidence and historical description, it should be concluded that the Complainant's trademark and corresponding tradename are well-known.
The Respondent (residing in Poland) registered and used the disputed name in the contested domain 'carrafour.eu', despite undeniable awareness of the popularity and reputation of the highly similar designation carrefour, constituting Compliant legal name, his trademarks and domain name. This is not altered by the fact that the contested designation is not identical to the 'carrefour' designation. In the view of the herein Panel, the similarity of the compared designation is very high, which results in the risk of confusion of the users of the Internet. Moreover, no particular activity on preparation or actual using the name 'carrafour' in the market by the Respondent were established in the herein case, justifying the registration of that name.
In accordance to that, the Panel finds that the Respondent did not have any kind of rights to the name and no particular interest in registering such name that could be derived from any rights.
In the view of the gathered evidences in the case at hand, the disputed domain was used by the Respondent primarily in order to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks, profiting from their (intended or not) entrance to the website under the disputed domain. Website under the domain 'carrafour.eu' is a dynamically generated website that includes third-party advertising, which – in relation to the high similarity to the well renown designation carrefour – is to be considered as an infringement of Complainant's rights, and a criminal offence, pursued by the provision of Polish law.
In accordance to the provision of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter referred to as: Regulation), a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, and where it:
(a) has been registered by its holder without rights or legitimate interest in the name; or
(b) has been registered or is being used in bad faith.
Moreover, in accordance to the provisions of Article 21(2) of the Regulation, a legitimate interest may be demonstrated where:
(a) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;
(c) the holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.
In the case at hand, regardless of the illegal nature of the activity of the Respondent, none of the abovementioned circumstances, indicating on the justified interest in registering and using the disputed domain name, were established. Furthermore, due to the fact that the disputed domain name is confusingly similar to the well-known Complainant designation.
In accordance to the provision of Article 21 (30 of the Regulation, registering or using the designation in the bad faith refers to the situations, where:
(a) circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law or to a public body; or
(b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) a pattern of such conduct by the registrant can be demonstrated; or
(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or
(iii) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated;
(c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
(d) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or
(e) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.
In accordance to the above it has to be noted, that the disputed domain name was registered and used in bad faith by the Respondent. Due to the evidences gathered in the proceedings, the domain “carrafour.eu’ served primarily as a parking page of pay-per-click commercial links. Confusingly similar name of the disputed domain name to the renown and well-known designations of the Complainant was intended to profit from the impression that there is a relation between the services available through the website and the Complainant. Confusion may arise also as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a disputed domain name.
In the opinion of the herein Panel the disputed domain was intended to be used in such manner from the moment of its registration.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name CARRAFOUR.EU be transferred to the Complainant

## PANELISTS

| Name | **Mariusz Kondrat** |
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DATE OF PANEL DECISION 2021-04-01

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: [carrafour.eu]
II. Country of the Complainant: [France], country of the Respondent: [Poland]
III. Date of registration of the domain name: [5 October 2020]
IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: company name, earlier identical domain name, rights to earlier European trademark.
V. Response submitted: [No]
VI. Domain name is confusingly similar to the protected rights of the Complainant.
VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. [No]
2. Why: ---
a) No registration of any kind related to the domain name under dispute.
b) Not commonly known by the domain name.
c) The holder of a domain name is not making a legitimate and non-commercial or fair use of the domain name.
VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. [Yes]
2. Why:
a) the domain name was registered primarily for the purpose of improper gains, disrupting the professional activities of the Compliant, in an attempt to impersonate the Compliant, offering on the market certain services with no intention of their provision.
b) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established by national and Community law, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.
c) the domain name is highly similar to the name of a Complainants’ company, and the Panel has not been proved to have any connection between the Respondent and the registered disputed domain name. Nor is any such connection apparent;

IX. Other substantial facts the Panel considers relevant: None
X. Dispute Result: Transfer of the disputed domain name