

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Carrefour v. Mera Art

Case No. C2016-0003

Also in PDF C2016-0003

1. The Parties

The Complainant is Carrefour, having its office at 33 avenue Emile Zola 92100 Boulogne-Billancourt, France.

The Complainant has initiated the Complaint vide their authorized representatives, Ms. Nathalie Dreyfus of Dreyfus & associés, located at 78, avenue Raymond Poincaré 75116 Paris, France.

As per the PKNIC Whois database, the Respondent is Mera Art and the contact details are meraart@gmail.com [provided by Registry].

2. The Domain Names and Registrar

The domain name in dispute is <carrefour.pk>, hereinafter referred to as the Disputed Domain Name and has been registered by G.M. Farooq since 31.05.2015.

3. Procedural History

Under the Supplemental Rules of DNDRC which override the ICANN Rules for Uniform Domain Name Dispute Resolution Policy in terms of paragraph 2 of the PKNIC - Internet Domain Registration Policy v 4.2, which states that “*DNDRC may consider and issue a recommendation in the matter in accordance with its own rules for such disputes or in default of such rules apply the Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999) and/or the Rules for Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999).*” As such DNDRC applies its Supplemental Rules to these

proceedings as well as the UDRP and in case of any conflict the DNDRC Supplemental Rules to the ICANN Rules for the UDRP and UDRP apply.

A complaint was received and accepted by the Domain Name Dispute Resolution Center (the “DNDRC”) with all completed formalities as on.

In accordance with the PKNIC - Internet Domain Registration Policy and the Rules of ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP], paragraphs 2(a) and 4(a), DNDRC formally notified the Respondent of the Complaint via email dated 11th March, 2016 and the Respondent was asked to provide DNDRC with the Response in the format provided. The Respondent was informed that if a Response in accordance with the Rules, on the Response Form provided was not received within 10 days from the notification, the dispute would proceed *ex parte*. The Respondent was sent a second notice on 7th April, 2016 and was asked to provide DNDRC with a Response within 7 days. The Respondent failed to provide a response within the stipulated time period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Ms. Zahra D'souza as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <carrefour.pk >.

PKNIC has confirmed via their email dated Sunday, 6th March, 2016 that the Disputed Domain Name has been registered by the Respondent named in the Complaint and that their email address is meraart@gmail.com.

4. Parties Contentions

A. Complainant

Over the past 50 years Carrefour has grown to become a world leader in the retail sector. The second-largest retailer in the world and the first one in Europe, Carrefour operates under four store formats: hypermarkets, supermarkets, convenience stores and cash and carry shops for professionals. With 10,800 stores in 34 countries, it generated revenues of £100.5 billion under banners in 2014. Every day, it welcomes more than 10 million customers around the world, offering

them a wide range of products and services at fair prices. It generates more than 53% of its sales outside France.

As a multi-format, multi-channel, multi-location retailer, Carrefour responds to the diverse needs of its urban and rural customers, both individual shoppers and trade clients, wherever they are in the world. In addition, Carrefour updates its stores on an ongoing basis to create a more comfortable shopping experience and improve service quality, whilst reducing their environmental impact.

Carrefour has always given priority to products sourced locally, that is, products from the region in which they are sold. In France, each Carrefour hypermarket works with around 100 local producers on average. This direct supply policy generates benefits at all levels. It provides customers with a wider choice, as well as better-tasting regional products; it guarantees product freshness and quality since there is a direct relationship between producers and stores.

Carrefour has extended its activities in the Middle East and operates numerous stores in those countries.

Complainant noticed that the domain name <Carrefour.pk> has been registered. Whois Database search revealed that this domain name was registered by Respondent.

Complainant's effort to resolve this amicably

Complainant became aware of Respondent's registration of the domain name <Carrefour.pk> which entirely reproduces its trademark and trade name CARREFOUR. The disputed domain name resolves to an inactive page.

Before starting the present proceeding, Complainant made some efforts to resolve this matter amicably.

On July 27, 2015, Complainant sent a cease-and-desist letter to Respondent via registered letter and email on the basis of its trademark rights. The cease and desist letter requested Respondent to transfer the disputed domain name to Complainant free of charge.

On September 19, 2015, Respondent replied and proposed to sell the domain name to Complainant for a price of \$30,000 USD.

As no amicable settlement could be found, Complainant has no other choice but to initiate a UDRP procedure against Respondent in order to obtain the transfer of the disputed domain name.

The Complainant's brief contentions are reproduced below:

- A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;*
- B. The Respondent has no rights or legitimate interest in respect of the domain name;*
- C. The domain name was registered and is being used in bad faith;*

Therefore, the Complainant seeks the following remedy:

The Complainant requests the Administrative Panel appointed in this administrative proceeding that the domain name <Carrefour.pk> be transferred to the Complainant.

B. Respondent

The Respondent has not submitted any response to DNDRC.

Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules.

The Respondent applied for and was granted registration of the Disputed Domain Name on the

basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the PKNIC - Internet Domain Registration Policy, dated 07-Aug-2007, version 4.2 and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*
- iv. *Registration and use of the domain name in bad faith (a UDRP criteria).*

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy Aug-07-2007 version 4.2 states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*

- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy Aug-07-2007, version 4.2,

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name, is not bona fide as recognized by international best practice, is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the Disputed Domain Name shall be assessed in consideration of the following criteria:

- i. Whether the Disputed Domain Name infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the Disputed Domain Name is bona fide?
- iii. Whether the application and/or registration of the Disputed Domain Name contravenes the Pakistan Penal Code, 1860 (the “Penal Code”) or any applicable criminal law?

The Panel will deal with each of these sub-issues sequentially below.

- i. Whether the Disputed Domain Name infringes upon, or is an obvious derivation of, a registered trade name / trade mark?**

The Complainant has stated:

Complainant and its trademark CARREFOUR enjoy a worldwide reputation. Indeed, Complainant owns numerous trademark registrations around the world.

Complainant is in particular the owner of the following trademark registrations (Annex 6)...

In addition, Complainant operates, among other, the following domain name reflecting its trademark in order to promote its services (Annex 7)

The Complainant has provided, along with annexing evidence of the same, that it has trademark rights in the mark CARREFOUR in numerous jurisdictions, including international trademark registration in the mark CARREFOUR in classes 1-19 and 20-42. The registered trademark appears to be incorporated in its entirety in the Disputed Domain Name <www.carrefour.pk> and is an obvious derivation of the same.

The Respondent has not provided any information whatsoever with respect to the Disputed Domain Name and as such, no data is available to the Panel to consider on the part of the Respondent.

The Panel therefore finds that the Disputed Domain Name <www.carrefour.pk> incorporates the registered trade mark of the Complainant CARREFOUR in its entirety, and that such an infringement constitutes an infringement of the trademark registrations of the word CARREFOUR that are held by the Complainant.

As per paragraph 1 of The PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2, if a Complainant simply establishes this one criterion of infringement upon a registered trade mark/name, the registration would be deemed illegal and unlawful and for all purposes invalid.

Hence, the Panel may well determine, on this criteria alone, that the Disputed Domain Name should be transferred to the Complainant. However, for the purpose of completeness, but not to create any binding precedent requiring the same to be followed in the future, the Panel will also assess and determine the remaining sub-issues as identified above.

ii. Whether the application and/or registration of Disputed Domain Name is bona fide?

The Complainant has been offering its services under the trade mark CARREFOUR in a number of countries for a long period of time, well before the Respondent registered the Disputed Domain Name. The Respondent has failed to rebut the assertion that the registration of the Disputed Domain Name was not bona fide. As such, the Panel is unable to reasonably assume/infer bona fide on part of the Respondent, based on any documentary evidence of any kind, even more so in

the absence of any information with respect to the Respondent's intentions/reasons for using the word "Carrefour" to register a domain name.

Therefore, the Panel finds that the Respondent has failed to demonstrate that the registration of the Disputed Domain Name is bona fide.

iii. Whether the application and/or registration of the Disputed Domain Name contravene the Penal Code or any applicable criminal law?

Prior to discussing this sub-issue, it is pertinent to clarify the grounds for examining relevant Pakistani law provisions. Although Pakistani law does not apply by force of law over PKNIC's jurisdiction, by operation of the PKNIC- Internet Domain Registration Policy Aug 07, 2007 version 4.2, it is necessary to examine provisions of the Penal Code and other applicable criminal laws. It is in this spirit and for this purpose alone that the following provisions of Pakistani law are being analyzed. The ordinances, and the sections mentioned herein below, have been discussed at length in *Standard Chartered PLC v. Hosting Campus Domain (case no. C2007-0001)*.

Trade Marks Ordinance, 2001

40. Infringement of registered trade mark.-

(6) A person shall infringe a registered trade mark if the person uses such registered trade mark as his domain name or part of his domain name or obtains such domain name without consent of the proprietor of the registered trade mark, with the intention of selling such domain name to another including the proprietor of the registered trade mark.

4. Domain name not to be misleading as to character or significance.- *(1) A domain name shall not be registered if the public is liable to mislead as regards the character or significance of the mark, in particular, if it is likely to be taken to be something other than a domain name.*

Electronic Transactions Ordinance, 2002 ("ETO")

3. Legal recognition of electronic forms.—

No document, record, information, communication or transaction shall be denied legal recognition, admissibility, effect, validity, proof or enforceability on the ground that it is in electronic form and has not been attested by any witness."

Penal Code

Of Trade, Property and Other Marks

478. Trade mark.

A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purpose of this Code the expression “trade mark” includes any trade mark which is registered in the register of trade marks kept under the Trade Marks Act, 1940 (V of 1940)

Upon a study of the above-quoted sections of the Trade Marks Ordinance, 2001 and the Penal Code, the Panel is of the view that the infringement of Trade Marks and Trade Names have been equated with domain names under Pakistani law. Therefore, the provisions of the Penal Code dealing with Trade Mark infringement appear to apply to domain names.

Moreover, according to Section 3 of the ETO, all material, instruments that would otherwise be in writing or in physical form, if generated or made available in electronic form would attract the provisions of the same sections of the Penal Code or any other applicable law had the material been in physical, written or in printed form. The Penal Code, therefore, by the operation of Section 3 of ETO, equally applies to transactions, publications or materials including the use of any trade mark or trade name made available in any electronic form on the internet through the use of a domain name.

By continuing the registration of the Disputed Domain Name by a person who is other than the owner, holder or authorized user of the trade mark or trade name, the registrant would be an aider, abettor, encourager and co-conspirator and also liable to criminal offences.

479. Property mark.

A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. Using a false trade mark.

Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

As such, if a person other than the owner, rightful holder or authorized user of the trade mark or trade name uses the Disputed Domain Name, if possibly linked to any service or goods, it may constitute an offence under the Penal Code.

481. Using a false property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Punishment for using a false trade-mark or property mark.

Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

As decided in *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), the use of a false property mark (which includes domain names on electronic encasements, packaging or containers such as websites or TCP/IP packets or messages) with the reasonable expectation that people would be misled to believe that the trade mark or trade name or domain name belongs to a person to whom it does not belong may also constitute an offence under the Penal Code.

The Panel, therefore, is of the view that the Respondent's registration of the Disputed Domain Name may attract the above-mentioned provisions of the Trade Marks Ordinance, 2001, Penal Code and ETO. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC- Internet Domain Registration Policy Aug 7, 2007.ver 4.2.

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

The disputed domain name <Carrefour.pk> reproduces the Complainant's trademark CARREFOUR, which previous panels have considered to be "well-known" or "famous" (WIPO Case No. D2015-0962, Carrefour v. Tony Mancini, USDIET Whoisguard, Inc, WIPO Case No. D2015-0769, Carrefour v VistaPrint Technologies Ltd., WIPO Case No. D2014-1425, Carrefour v. Park KyeongSook, WIPO Case No. D2014-0257, Carrefour v. Yujinhua, WIPO Case No. D2013-2002, Carrefour v. Karin Krueger, WIPO Case No. D2011-2248, Carrefour S.A. v.

Patrick Demestre; WIPO Case No. D2008-1996, Carrefour v groupe Carrefour; WIPO Case No. D2007-0067 Carrefour SA v. Eric Langlois – Annex 8).

In many WIPO decisions, Panels have considered that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to the Complainant’s registered mark (WIPO Case No. 2013-0150 Swarovski Aktiengesellschaft v. mei xudong; WIPO Case No. D2010-1059, RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin – Annex 9).

Secondly, the extension “.pk” or any other ccTLD is not to be taken into consideration when examining the identity or similarity between the complainant’s trademark and the dispute domain name. It is well established that the addition of the TLD suffix does not affect the likelihood of confusion merely because it is necessary for the registration of the domain name itself (WIPO Case No. DTV2011-0003, IndiaMART InterMESH Limited v. Personal, Manoj Nair/WhoisGuard and WIPO Case No. D2011-0775, L’Oréal v. Guowei Hai Gui – Annex 10)

Accordingly, by registering said domain name, Respondent created a likelihood of confusion with Complainant’s trademark. It is likely that this domain name could mislead Internet users into thinking that it is, in some way, associated with Complainant.

For all of the above mentioned reasons, the domain name in dispute is identical or confusingly similar to the trademark CARREFOUR in which the Complainant has rights, and therefore the condition of Paragraph 4(a)(i) is fulfilled.

The Respondent has not provided any information, and has not refuted the contention put forth by the Complainant with respect to its trademark “CARREFOUR”.

It is an established principle that the incorporation of a Complainant’s trade mark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name (see *Nokia Group v. Mr. Giannattasio Mario*, [WIPO Case No. D2002-0782](#), *The Ritz Hotel Ltd v. Damir Kruzicevic*, [WIPO Case No. D2005-1137](#)). It is also a well-established principle that the mere addition of a gTLD suffix “.com” or its equivalent is not relevant to the consideration of confusing similarity as it is an integral part of a domain name (*Quintessentially UK v. Mark Schnoreberg / Quintessentially Concierge*, [WIPO Case No. D2006-1643](#)).

It is apparent that the Disputed Domain Name reproduces the trademark owned by the Complainant in its entirety, thereby rendering the Disputed Domain Name confusingly similar to the trademark of the Complainant.

The Complainant has provided sufficient information, including annexing evidence of the same, that the Complainant has rights in the trademark CARREFOUR.

In the absence of any information or evidence provided by the Respondent, the Panel is unable to infer that the Respondent is commonly known by the Disputed Domain Name. The Panel therefore finds confusing similarity between the Disputed Domain Name and the Complainant's trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

“proved based on all evidence presented” that “shall demonstrate” the Respondent’s “rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii).”

Paragraph 4(a)(ii) states that:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant has contended:

Respondent has no prior rights or legitimate interest in the domain name. The registration of the trademark CARREFOUR preceded the registration of the disputed domain name for years (Annexes 1 and 6).

The domain name in dispute is so similar to the famous trademark CARREFOUR of Complainant that Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name.

Secondly, Respondent is not commonly known by the name “CARREFOUR”, in any way affiliated with Complainant, nor authorized or licensed to use the trademark “CARREFOUR”, or to seek registration of any domain name incorporating said mark. In previous decisions, Panels found that in the absence of any license or permission from the Complainant to use such widely-known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No. D2010-0138, LEGO Juris A/S v. DomainPark, Ltd, David Smith, Above.com, Domain Privacy, Treasure Enterprise Ltd, Host master – Annex 11).

In addition, Respondent did not demonstrate use of, or demonstrable preparations to use, the domain name in connection with a bona fide offering of goods and services. Indeed, the disputed domain name resolves to an inactive page (Annex 1).

A legitimate, non-commercial or fair use of the domain name as per the policy cannot be inferred due to Respondent’s clear intention for commercial gain. Indeed, considering the exchanges with Respondent (Annex 5), it appears that the only reason why Respondent has registered the disputed domain name is for the purpose of selling it to the Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

For all the above-cited reasons, it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the domain name in dispute under the Policy.

The Respondent has not submitted a Response, nor has it provided any information, annexures, evidence, documentation or the like to support its registration of the Disputed Domain Name and in particular assert a legitimate interest in the Disputed Domain Name.

As has been previously adopted by the discussions and findings in WIPO Authorities, it is for the Respondent to rebut the allegations put forth by the Complainant. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be almost impossible, if not extremely difficult for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the Disputed Domain Name, the Respondent was obliged to submit evidence with respect to the same.

In the absence of any information provided by the Respondent in support of his legitimate interest in the Disputed Domain Name, the Panel based on the information provided by the Complainant finds that the Respondent does not have rights or a legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

1) Registration in bad faith

It is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name. CARREFOUR is a well-known trademark throughout the world, including the Middle East where the Respondent is located. Indeed, several Panels have previously mentioned its worldwide reputation, making it unlikely that Respondent was not aware of Complainant's proprietary rights in the said trademark (Annex 8).

Previous Panels have established that knowledge of the Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name proves bad faith registration (WIPO Case No. D2006-0464, Caixa D'Estalvis I Pensions de Barcelona ("La Caixa) v. Eric Adam, WIPO Case No. D2007-0077, NBC Universal Inc v. Szk.com and WIPO Case No. D2008-0287, Alstom v. Domain Investments LLC – Annex 12).

In light of the reputation of Complainant's trademark CARREFOUR, Respondent's reproduction of the trademark in its entirety in the disputed domain name clearly provides that Respondent was aware of the existence

of Complainant's trademark. Bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (WIPO CASE No. D2010-0494, LEGO Juris A/S v. Reiner Stotte and WIPO Case No. D2006-0303 Sanofi-Aventis v. Nevis Domains LLC – Annex 13). Given the reputation of the Complainant's trademark, registration in bad faith can be inferred.

Additionally, a quick trademark search on "CARREFOUR" would have revealed to Respondent the existence of Complainant and its trademark. Respondent's failure to do so is a contributory factor to its bad faith (WIPO Case No. D-2008-0226, Lancome Parfums etc Beaute & Cie, L'Oreal v. 10 Selling – Annex 14).

In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of Complainant and its trademark as well as the high level of notoriety of Complainant, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademark at the time of registration of the disputed domain name.

Bad faith can be found where Respondents "knew or should have known" of Complainant's trademark rights and, nevertheless, registered a domain in which he had no right or legitimate interest (WIPO Case No. D2009-0113, The Gap, Inc. v. Deng Youqian – Annex 15).

2) Use in bad faith

Some elements may be put forward to support the finding that Respondent also uses the domain name in bad faith.

Such use of the disputed domain name was not authorized by Complainant; in this respect, previous Panels have considered that in the absence of any license or permission from Complainant to use such widely known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No. d2008-0281), Alstom, Bouygues v. Webmaster – Annex 16).

Moreover, Respondent's immediate offer to sell the domain name despite having been summoned to transfer the domain name to Complainant free of charge through a cease-and-desist letter, without giving any reasons why he had registered the domain name or without consenting Complainant's trademark, are clear indications that he was unaware of the Complainant's trademark when he registered the disputed domain name (Annex 5). Indeed, Respondent has attempted to sell the domain name for a sum of \$30,000 USD which is in excess of the Respondent's out of pocket expenses in registering the domain name (Annex 5). Considering the exaggerated amount of money asked, it seems obvious that Respondent is aware of the reputation of the trademark CARREFOUR and hoped to sell the domain name to the Complainant or to a competitor of Complainant.

It is well established that the offer to sell a domain name in excess of the out of pocket expenses of the respondent in registering the domain name can be compelling evidence of bad faith registration and use (WIPO Case No. D2012-2183, Imara Trade Marks BVI Limited v. Direct Privacy ID 1078D, Domain Name Proxy Service, Inc, WIPO Case No. D2000-0282, Massachusetts Medical Society v. Michael Karle, WIPO Case No. D99-0001, World Wrestling Federation Entertainment Inc. v. Michael Bosman – Annex 17).

As mentioned earlier, the domain name <carrefour.pk> is currently inactive (Annex 1). Nevertheless, this state of inactivity does not mean that the domain name is used in good faith. Indeed, passive holding does not preclude a finding of bad faith: "A principle widely adopted by panels since shortly after the inception of the UDRP has been to examine all the surrounding circumstances in which a disputed domain name may appear to be, or is claimed to be, held passively without any evident usage of purpose" (WIPO CASE No. D2011-0421, Cleveland Browns Football Company LLC v. Andrea Denise Dinola – Annex 18).

Previous Panels have already considered that passive holding of a disputed domain name can satisfy the requirements of paragraph 4(a)(iii), and that in such cases the Panel must give close attention to all the

circumstances of Respondents' behavior (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows – Annex 19).

In Testra Corporation Limited v. Nuclear Marshmallows, the Panel concluded that Respondent's passive holding of the domain name satisfied the requirement of paragraph 4(a)(iii) that the domain name was being used in bad faith by Respondent because: (1) the Complainant's trademark had a strong reputation and was widely known; (2) Respondent had provided no evidence of any actual or contemplated good faith use by it of the domain name; (3) Respondent had taken active steps to conceal its true identity, by operating under a name that is not a registered business name; and (4) Respondent had actively provided and failed to correct, false contact details, in breach of its registration agreement.

Similarly, reproducing famous trademarks in a domain name in order to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith.

Finally, it is likely that the Respondent registered the domain name to prevent Complainant from using its trademark in the disputed domain name. According to former panel, this type of conduct constitutes evidence of Respondents' bad faith (WIPO Case No. D2009-242, L'oreal v. Chenxiansheng – Annex 20).

All the aforementioned circumstances confirm that the disputed domain name is used in bad faith.

Consequently, it is established that the Respondent both registered and used the disputed domain name in bad faith in accordance with the Policy.

Paragraph 4(b) of the UDRP states that:

"the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain

name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

Paragraph 15(a) of the Rules instructs the Panel to “*decide a complaint on the basis of the statements and documents submitted in accordance with the policy, these rules and any rules and principles of law that it deems applicable*”.

The Respondent has not provided any information or evidence to demonstrate lack of bad faith. It is reiterated for the sake of clarity that the Complainant, in order to provide online services on a .pk ccTLD is unable to do so since the domain name with the .pk ccTLD is unavailable for registration because the same has been registered by the Respondent. As such, the Complainant is unable to register the domain name on the .pk ccTLD for itself even though it has registered the trademark CARREFOUR for its own use.

Correspondence between the Respondent and Complainant annexed by the Complainant shows that the Respondent is offering to transfer the domain name to the Complainant for a valuable consideration in excess of his documented out-of-pocket costs directly related to the domain name. This leads the Panel to believe that the Respondent is attempting to disrupt the Complainant's business.

In the absence of any information provided by the Respondent, therefore, the Panel finds that the registration and use of the Disputed Domain Name by the Respondent is in bad faith.

WIPO Authorities:

The Panel, for the purpose of assessing the matter and this Decision, has taken into account, reviewed and made use of the Discussions & Findings in the WIPO Authorities mentioned and relied upon by the Complainant.

Furthermore, the Panel has also relied upon the Discussions & Findings in several WIPO Administrative Panel Decisions, inter alia:

- Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Universal City Studios, Inc., supra
- CBS Broadcasting, Inc. v. Gaddoor Saidi, WIPO Case No. D2000-0243,
- Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525
- Nokia Group v. Mr. Giannattasio Mario, WIPO Case No. D2002-0782
- The Ritz Hotel Ltd v. Damir Kruzicevic, WIPO Case No. D2005-1137
- Quintessentially UK v. Mark Schnoreberg / Quintessentially Concierge, WIPO Case No. D2006-1643
- NB Trademarks, Inc. v. Domain Privacy LTD and Abadaba S.A., WIPO Case No. D2008-1984
- The South African Football Association (SAFA) v. Fairfield Tours (Pty) Ltd, WIPO Case No. D2009-0998

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the CARREFOUR mark, hence the Complainant reserves crucial interest in them. Usage of these marks by the Respondent for unfair commercial gain could endanger the reputation that the Complainant has worked hard at building and maintaining.

Taking all of the case law and discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the Disputed Domain Name is contrary to the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2
2. The Respondent has no legitimate interest in the Disputed Domain Name.
3. The Disputed Domain Name is identical to the Complainant's trademark/names and registered domain names.

4. The Respondent is engaging in the unfair use of the Complainant's trade marks/names for personal commercial gain.

Pursuant to Section 4 of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2, and Section (i) of the Policy, the Panel therefore recommends that PKNIC transfer the registration of the domain name in dispute <www.carrefour.pk> to the Complainant, as prayed within 48 hours of receipt of this decision by email or its being uploaded on to DNDRC's website www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Ms. Zahra D'souza

Sole Panelist

Date: 09th May, 2016