

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v.
WhoisSecure / johnson, GN
Case No. D2022-0152

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc – A.C.D. Lec, France, represented by INLEX IP, France.

The Respondent is WhoisSecure, United States of America / johnson, GN, Singapore.

2. The Domain Name and Registrar

The disputed domain name <louerchezleclerc.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2022. On January 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 2022 providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 20, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. On February 7, February 9 and February 16, 2022, the Center received email communications from Gname.com Pte. Ltd. which are considered below.

The Center appointed Antony Gold as the sole panelist in this matter on February 15, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant owns and operates a chain of approximately 721 supermarkets and hypermarkets in France as well as about 100 stores in other countries in Europe. The Complainant's business was established almost 70 years ago and it now has approximately 133,000 employees. In 2019, its turnover was EUR 48.20 billion.

The Complainant's brand name is LECLERC and it owns a number of trade marks to protect this trading style, including European Union Trade Mark, registration number 002700656, for LECLERC in multiple classes, registered on February 26, 2004. It also owns and operates a number of domain names associated with its goods and services, including <e.leclerc> and <mouvement.leclerc>.

The disputed domain name was registered on November 11, 2021. As at the time of submission of the Complaint, it resolved to a web page in Chinese characters which invited Internet users to click on a green button. Internet users who did so were redirected to a web page at another website location, the content of which was also in Chinese characters and comprised a login screen for a mobile lottery gambling website. The disputed domain does not currently resolve to an active website¹.

On February 7, 2022, Gname.com PTE. Ltd ("Gname")², which is a company which provides domain name registration and related services, sent an email to the Center asserting that it was the registrar of the disputed domain name and purporting to provide details of the underlying registrant. On February 8, 2022, the Center asked the Registrar to confirm the accuracy of the registrant and contact information which it had provided on January 19, 2022, which it duly did. On February 8, 2022, this confirmation was notified to Gname, who responded on February 9, 2022 stating that its earlier email had been sent in error and should be ignored. On February 16, 2022, Gname sent a further email to the Center, repeating its statement that it was the registrar, not the registrant, of the disputed domain name and providing contact details of xiao ceng, a different party to that provided on February 7, 2022 which, it said, was the underlying registrant.

On March 2, 2022, the Panel issued the Administrative Procedural Order No.1 instructing the Center to forward a copy of the Notification of Complaint and Commencement of Administrative Proceeding to the email address of xiao ceng, copying the parties, and requesting Gname and xiao ceng to clarify the relationship between them in addition to inviting xiao ceng to provide comments on the Complaint, if any. In addition, the Panel requested Gname and/or the Respondent, johnson, GN, to clarify why the registrant details of "johnson, GN" were provided for the disputed domain name. No reply was received to the Administrative Procedural Order No.1.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. It refers to its marks for LECLERC, details of one of these marks having been set out above, and says that this term is highly distinctive with no meaning in French or English. The disputed domain name contains its mark in full and adds as a prefix the words "louer chez", which translates as "to rent at". This additional content does not lessen the confusing similarity with the Complainant's mark and, in

¹ As explained at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly attempted to visit the website to which the disputed domain name resolves and has established that it is currently inactive.

² The email address uses the same domain name that was used as the registrant's email address as disclosed by the Registrar.

fact, serves to increase the risk of confusion as the Complainant also offers car rental services through its website at “www.location.leclerc”.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no indication that the Respondent is commonly known by the disputed domain name, nor has the Respondent been authorized, licensed or otherwise been permitted by the Complainant to use its LECLERC mark nor, to the Complainant’s best knowledge, does it have any other rights in LECLERC. The use of the disputed domain name to redirect to a gambling-related website does not comprise a *bona fide* offering of goods and services.

Finally, the Complainant says that the disputed domain name was registered and is being used in bad faith. Having regard to the longstanding repute of the Complainant’s LECLERC mark, the Respondent was most likely aware of the Complainant’s activities and of the existence and use of its LECLERC trade mark as at the time the registration was made. Indeed there is no other reasonable explanation for the Respondent’s registration of the disputed domain name incorporating, as it does, the Complainant’s distinctive mark and combining it with words which associate it with the Complainant’s car hire activities in France.

The disputed domain name is also being used in bad faith. The Respondent’s use of the disputed domain name is disrupting its business and causing harm to the Complainant’s brand image. Internet users and particularly the Complainant’s customers may wrongly believe that the website to which it resolves is that of the Complainant, but that it is not functioning correctly or has been hacked. The Respondent has not replied to a cease and desist letter dated December 17, 2021, nor a reminder, and so it has not proved possible to resolve this matter without the issue of these proceedings. Moreover, the use of a privacy service by the Respondent is a further indicator of bad faith registration.

B. Respondent

The Respondent has not served a formal Response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Respondent’s Identity

Before turning to the substantive issues, the Panel deals with the emails sent to the Center by Gname claiming that it is the registrar of the disputed domain name and that another party (xiao ceng) is the registrant. Paragraph 1 of the Rules defines respondent as “the holder of a domain-name registration against which a complaint is initiated”. The Whois record is a record of key information relating to a domain name, including the details of the registrar. The Registrar has reaffirmed to the Center that, consistent with the Whois record, it is the registrar of the disputed domain name and that johnson, GN is the underlying registrant.

In view of the information provided by Gname, the Panel issued the Administrative Procedural Order No.1 instructing the Center to forward a copy of the Notification of Complaint and Commencement of Administrative Proceeding to the email address of xiao ceng.

The Panel notes that according to a Whois search, the Registrar of the disputed domain name is indeed OwnRegistrar, Inc. Moreover, whilst the relationship between Gname and xiao ceng is unclear and it could be that the actual holder or user of the disputed domain name is xiao ceng, the Registrar has confirmed that the Respondent is the registrant of the disputed domain name.

Taking into account that no reply was received to the Administrative Procedural Order No.1, in the present circumstances, the Panel finds that johnson, GN is the Respondent, and that the substantive issues for the Panel to consider are essentially the same, irrespective of Gname's contentions. References below to the Respondent shall be construed to include the final user of the disputed domain name (if any).

B. Identical or Confusingly Similar

The Complainant has provided evidence of its trade mark registrations for LECLERC, including the mark in respect of which full details are provided above. It has thereby established its rights in this mark.

When comparing the Complainant's mark and the disputed domain name, the Top Level Domain ".com" is not taken into account as it is a technical requirement of registration. The disputed domain name comprises the Complainant's mark, in full and without alteration, and adds to it the prefix "louerchez". This additional term does not prevent the disputed domain name from being found to be confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

The Complainant's LECLERC mark is recognizable within the disputed domain name and the Panel accordingly finds that it is confusingly similar to a trade mark in which the Complainant has rights.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are: if a respondent has used, or made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods and services; if a respondent has been commonly known by the domain name or a name corresponding to the domain name; or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The previous use of the disputed domain name in order to direct to a webpage which redirected Internet users to a gambling website did not comprise a *bona fide* offering of goods and services. The extent to which Internet users, who were most likely seeking rental or hire services provided by the Complainant in France, might have found a Chinese language gambling website to be of interest is not readily apparent. However, irrespective of the efficacy of such use of the disputed domain name, the Respondent was nonetheless using the repute of the Complainant's mark and the confusing similarity to it of the disputed domain name in order to attract Internet users to its webpage and, most likely, deriving a commercial advantage from those Internet users who clicked on the green button and were taken through to the third party website. But, even if no such financial benefit was obtained, use of the disputed domain name simply as a means of funneling Internet traffic to a third party website providing gambling services, in the present circumstances, does not comprise use in connection with a *bona fide* offering of goods and services.

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of it; see, by way of example, *G4S Plc v. Muyou Chen, wer*, WIPO Case No. [D2020-0715](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent; see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). In the absence of any response from the Respondent to the Complainant's contentions, it has failed to satisfy that burden. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

D. Registered and Used in Bad Faith

As explained above, the disputed domain name uses the Complainant's LECLERC mark in full and couples it with the term "louer chez", so that the English language equivalent of the combined term would be understood as "Rent from Leclerc". This provides strong evidence that the Respondent was aware of the Complainant's LECLERC mark as at the date of registration and that it was registered in order to target the Complainant and take advantage of its repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#), "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith". See also *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Turning to bad faith use, Internet users who visited the Respondent's earlier webpage were unlikely to believe that they had encountered the Complainant's website. However, they will have been drawn to it because of the confusing similarity between the disputed domain name and the Complainant's LECLERC mark and the Respondent will have thereby have gained the opportunity of earning revenue from such visitors, whether as pay-per-click income from those Internet users who clicked through to the gambling website or otherwise; see *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#). The Respondent's conduct therefore falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely that, by its use of the disputed domain name, it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding; see section 3.3 of the [WIPO Overview 3.0](#). The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealment of its identity by its use of and (iv) the implausibility of any good faith use to which the domain name may be put.

These factors are fulfilled in the current circumstances in that: (i) the Complainant has established the repute of its LECLERC trade mark; (ii) the only use made of the disputed domain name to date has been in bad faith; (iii) the user of the disputed domain name has sought to conceal its identity; (iv) there is no plausible good faith use to which the disputed domain name could be put as, due to the composition of the disputed domain name, it would be implicitly connected to the Complainant. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

The Panel therefore finds that the disputed domain name has been registered and used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <louerchezleclerc.com>, be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: March 13, 2022