

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Super Privacy Service LTD c/o Dynadot / ning ning, ning
Case No. D2022-1869

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec, France, represented by Inlex IP Expertise, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / ning ning, ning, China.

2. The Domain Name and Registrar

The disputed domain name <leclercredon.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2022. On May 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 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 May 27, 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 May 31, 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 June 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on June 29, 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 is based in France and operates hundreds of supermarkets and hypermarkets located there and in several other European countries.

The Complainant owns several trademarks LECLERC and notably:

- the European Union trademark LECLERC No. 002700656 registered on February 26, 2004, and;
- the French trademark LECLERC No. 1307790 registered on May 2, 1985.

The disputed domain name, <leclercdon.com>, is owned by the Respondent, and the date of creation is October 9, 2021. The disputed domain name is used to redirect to various third party sites.

5. Parties' Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain name is confusingly similar to its LECLERC trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. There is no business relationship between the Complainant and the Respondent, and the Complainant has not authorized, permitted or licensed the Respondent to use the LECLERC mark. Also, there is no evidence that the Respondent is commonly known as the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant sent a cease-and-desist letter to the registrant and a deactivation request of the MX servers and the redirection set up on the disputed domain name. However, the Complainant did not receive any satisfactory result.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable, and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights.

With the Complainant's rights in the LECLERC trademark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level-Domain ("gTLD") in which the disputed domain name is registered) are identical or confusingly similar to the Complainant's mark.

It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name <leclercredon.com> reproduces identically the Complainant's trademark LECLERC. Prior panels have recognized that confusing similarity is established for purposes of the Policy where the dispute domain name incorporates the complainant's trademark in its entirety. See *Facebook Inc. v. Global Domain Privacy Services Inc. / Evgeniy Gavonov*, WIPO Case No. [DME2019-0011](#).

As regards the term "redon", the geographic term "redon" directly refers to a French city, Saint Nicolas De Redon, where the Complainant is implanted and has a LECLERC store. As discussed in sections 1.8 of the [WIPO Overview 3.0](#), in cases where the relevant trademark is recognizable within the disputed domain name, the addition of terms would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of "proving a negative", in particular as the evidence needed to show the Respondent's rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the

burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly that the Respondent has no authorization to use the Complainant's LECLERC trademark in a confusingly similar way within the disputed domain name. There is no business relationship existing between the Complainant and the Respondent. Despite this, the Respondent has constructed the disputed domain name using the Complainant's distinctive trademark along with the geographical term for the location where the Complainant was founded, thereby creating a risk of implied affiliation that cannot constitute fair use.

The Respondent's disputed domain name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate noncommercial fair use. In accordance with the case file, the disputed domain name was redirecting, using a redirection link "www.1redirb.com", to alternative and fraudulent pages (Annex 7 - Content of the website associated to the disputed domain name, on the dates of April 7 and May 23, 2022). Moreover, mail servers were set up on it which increases the risk of fraudulent use such as phishing (Annex 8 - MX servers set up on the disputed domain name, on the date of May 23rd, 2022). These facts show the Panel that the use of the disputed domain name should not constitute a *bona fide* offering of goods and services and has not been authorized by the Complainant.

In the absence of a Response, the Respondent has failed to demonstrate any of the non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant's mark is well known and thus was known by the Respondent prior to its registration of the disputed domain name. It should be also stressed that the denomination "leclerc" has no meaning in French or English and is highly distinctive, whereas "Leclerc" is the famous personal name of the founder of the Complainant's organization, Mr Edouard Leclerc. Moreover, its reproduction, in association with the geographic term "redon" that refers to a French city, Saint Nicolas De Redon, where the Complainant is implanted and has a LECLERC store, reinforces the Respondent's awareness of the Complainant and intent to cause confusion by association.

Therefore, the Panel is of the opinion that the Respondent has registered the disputed domain name precisely because he was well-aware of the existence of the Complainant's activity and organization and of the trademark LECLERC.

The Complainant tried to resolve this matter amicably, by sending a cease-and-desist letter to the registrant and a deactivation request of the MX servers and the redirection set up on the disputed domain name. However, the Complainant did not receive any satisfactory result and therefore filed a UDRP Complaint.

As it was established by the Panel above, since its detection, the disputed domain name was redirecting, using a redirection link "www.1redirb.com", to alternative and fraudulent pages. Such use should not be considered as a legitimate or fair use of the disputed domain name. It is deprived of any real and substantial offer of goods and/or services. Moreover, mail servers were set up on it which increases the risk of fraudulent use such as phishing.

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name was registered and is being used in bad faith by the Respondent.

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 <leclercredon.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: July 13, 2022