

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. xu xu
Case No. D2023-5275

1. The Parties

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

The Respondent is xu xu, China.

2. The Domain Name and Registrar

The disputed domain name <saleoneleclerc.shop> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2023. On December 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2023 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 December 21, 2023.

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 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2024. Accordingly, the Center notified the Respondent’s default on January 31, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on February 2, 2024. 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 a French chain of supermarkets and hypermarkets in France.

The Complainant owns several trademark registrations for its E. LECREC trademark, such as:

- The European Union registration No. 002700664 for the E LECLERC mark registered on January 31, 2005 and duly renewed;
- The European Union registration No. 11440807 for the E LECLERC mark (word and design) registered on May 27, 2013.

Prior panels recognized the well-known status of the Complainant's E. LECREC trademark for supermarket/hypermarket network.¹

The Respondent, who is purportedly located in China, registered the Domain Name on November 23, 2023. The Domain Name initially redirected to a Third Party website offering luggage for sale. Currently, the Domain Name does not direct to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that the Domain Name is similar to the Complainant's well-known E. LECLERC trademarks because the Domain Name incorporates its highly distinctive E. LECLERC trademark in its entirety. The Complainant argues that the addition of the words "sales on" does not prevent finding confusing similarity because the Complainant's mark is recognizable in the Domain Name. The Complainant argues that the addition of the generic Top-Level Domain ("gTLD") ".shop" should be disregarded from the confusing similarity analysis because it is a standard registration requirement.

The Complainant argues that the Respondent has no rights or legitimate interests in the Domain Name because it did not grant any license or authorization to use its mark in the Domain Name. Further, the Respondent is not commonly known under the name "E LECLERC" and has not acquired a trademark or service mark under that name. The Complainant contends that the Respondent did not use the Domain Name in connection with a bona fide offering of goods or services or for a legitimate non-commercial fair use. The Complainant argues that the Domain Name initially directed to a website offering luggage for sale, so it collected personal and banking information of Internet users. At some point in time the website under the Domain Name was deactivated. The Complainant contends that it also sells the same type of goods on its websites and in its stores. The Complainant alleges that its attorneys attempted to contact the Respondent about the Respondent's infringing use of the Domain Name, but they received no response. The Complainant alleges that the Domain Name has been registered and used in bad faith by the Respondent because the Complainant's mark E LECLERC supermarket/hypermarket network is well-known

¹ *Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy*, See [PrivacyGuardian.org / pastal dolly malhotra](https://www.privacyguardian.org/pastal-dolly-malhotra), WIPO Case No. [D2021-0037](#); *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. Privacy Service Provided by Withheld for Privacy ehf/ Name Redacted and Chantal Humbert*, WIPO Case No. [D2021-3902](#); *Association des Centres Distributeurs E. Leclerc v. WhoisGuard Protected, WhoisGuard, Inc. / auchanlove auchanlove*, WIPO Case No. [D2021-0031](#).

in France and other European countries and reputation of its mark was recognized by prior panels. The Complainant argues that the Domain Name disrupts the Complainant's business and causes harm to the Complainant's image because Internet users may believe that the Domain Name incorporating the Complainant's trademarks resolves to the Complainant's website. The Complainant contends that the Respondent did not respond to the Complainant's representative's letters, its behavior indicates bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The inclusion of the gTLD ".shop" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms, here, the term "sale on", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of

proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

The evidence on record shows that the Respondent is not commonly known by the Domain Name. Nor is the Respondent making a legitimate noncommercial or fair use of the Domain Name, because the Domain Name initially redirected to a third party page offering luggage for sale and currently does not direct to an active website.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. Such circumstances are present in this case. The Respondent registered the Domain Name, which consists of the Complainant's well-known trademark; the Respondent lacks any right or legitimate interest in the Domain Name, the Respondent's choice of the gTLD ".shop", which corresponds to the Complainant's area of business activity and the Respondent's failure to submit a response- all indicate that the Domain Name was registered and is being used in bad faith.

The Complainant contends that the Domain Name used to direct to an active website that offered for sale goods similar to those that the Complainant's sells on its website ("www.e.leclerc/cat/bagages"). The Panel finds that the Respondent registered the Domain Name with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the Domain Name's source, sponsorship, affiliation or endorsement. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the current non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the Domain Name, failure to submit a response, the Respondent's concealing its identity and use of false contact details and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

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 Domain Name <saleoneleclerc.shop> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: February 16, 2024