

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. Yun Lin
Case No. D2024-0389

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 Yun Lin, China.

2. The Domain Name and Registrar

The disputed domain name <eleclercwebs.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 29, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 5, 2024, 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 February 6, 2024.

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 February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 19, 2024.

The Center appointed Tommaso La Scala as the sole panelist in this matter on March 22, 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 company which owns the trademark E LECLERC denoting a chain of supermarkets and hypermarkets stores in France.

The E LECLERC trademark has been registered in European Union under Registration No. 002700664 (filed on May 17, 2002 and registered on January 31, 2005 and duly renewed) and No. 011440807 (filed on December 5, 2012 and registered on May 27, 2013 and duly renewed).

The Disputed Domain Name was registered on December 7, 2023, and currently redirects to an inactive webpage; however, the Disputed Domain Name was previously connected to a webpage dedicated to another company, "Colruyt Group", reproducing the company's logo and asking for login information. The Complainant sent a letter to the company inquiring as to its awareness of, or relationship with, the Disputed Domain Name and to which the company replied stating that it was not responsible for the Disputed Domain Name and also considered itself a victim of fraud.

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 Disputed Domain Name.

The Complainant is the owner of multiple trademark registrations that consist of the mark E LECLERC.

The Disputed Domain Name fully incorporates such trademark with the mere addition of the word "webs" and is therefore confusingly similar to the Complainant's mark.

The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant confirms it has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the E LECLERC trademark in any manner.

The Disputed Domain Name was registered in bad faith, since it incorporates the Complainant's famous trademark in its entirety, was registered through a privacy service masking the Respondent, and has been used for a fraudulent page dedicated to another company, "Colruyt Group".

B. Respondent

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

6. Discussion and Findings

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.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

The Complainant has shown that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain. Rather, the Respondent was engaged in an apparent phishing scheme to access Internet users' login information associated with the company, "Colruyt Group", and also mislead Internet users through the incorporation of the Complainant's trademark in its entirety. Such use for fraud can never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13. Moreover, the Panel finds that the composition of the Disputed Domain Name, with the additional term "webs", cannot constitute fair use as it effectively impersonates the Complainant.

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

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 Disputed 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 Disputed Domain Name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference that a respondent has registered and is using the domain name at issue to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Disputed Domain Name was registered after the Complainant first started using its E LECLERC trademark and the Complainant's evidence establishes extensive use of its mark as at the date of registration of the Disputed Domain Name. Given the confusing similarity between the latter and the

Complainant's mark, it is clear that the Respondent was aware of the Complainant and its E LECLERC mark as at the date of registration of the Disputed Domain Name and registered it in order to take unfair advantage of it.

The Disputed Domain Name has been used for an apparent login page that has been expressly disclaimed by the Colruyt Group. Accordingly, the Panel accepts on the evidence that the third-party company is not responsible for the registration or content of the Disputed Domain Name. However, it is not apparent why Respondent would register a domain name including the Complainant's famous trademark and then host a website relating to an unassociated third-party company. As stated in *Bayer AG v. dasofun adura*, WIPO Case No. [D2023-0385](#), "the Panel is satisfied that the Respondent most likely registered the disputed domain name to impersonate the Complainant and therefore for a dishonest purpose. That the Respondent is currently framing another's website does not mean that the Respondent cannot put this dishonest plan into practice at any time. As suggested by the Complainant, one may view the disputed domain name, in the hands of the Respondent, as an unjustifiable threat hanging over the head of the Complainant and thus constituting a current and continuing abusive use of the disputed domain name". On the balance of probabilities, the Panel agrees with the Complainant that the Respondent sought to create Internet user confusion through the incorporation of the Complainant's trademark and disrupt the Complainant's operations by resolving such misled Internet users to a website seemingly unassociated with the Complainant.

Moreover, the Panel notes that the Respondent appears to have furnished incomplete contact information for purposes of the registration of the Disputed Domain Name, the Center being unable to send its written communications to the details disclosed by the Registrar for the Respondent. Coupled together with its initial use of a privacy service to mask its identity, the Respondent has clearly sought to frustrate proceedings such as this by hiding its true identity, all of which supports an inference of bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

UDRP panels have categorically held that the use of a domain name for illegal activity (here, fraud) constitutes bad faith (see [WIPO Overview 3.0](#), section 3.1.4). Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

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

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 <eleclercwebs.com> be transferred to the Complainant.

/Tommaso La Scala/

Tommaso La Scala

Sole Panelist

Date: April 4, 2024