

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc – ACD Lec v. Domain Administrator, See PrivacyGuardian.org / Daniel Sassmann  
Case No. D2022-0992

### **1. The Parties**

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

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Daniel Sassmann, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <leclerc-oloron.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2022. On March 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 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 March 28, 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 April 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2022.

The Center appointed Michelle Brownlee as the sole panelist in this matter on May 4, 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 the owner of European Union Trade Mark Registration Number 2700656, registered on February 26, 2004, for the trademark LECLERC in connection with goods and services in all 45 International Classes.

The Domain Name was registered on January 3, 2022, and does not resolve to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that it is one of the most renowned supermarket and hypermarket chains in France. The Complainant states that it operates more than 700 stores across France and about 100 stores in countries outside of France, including Poland, Spain, Portugal, Andorra and Slovenia, and argues that the LECLERC trademark is well-known both in France and in other European countries. The Complainant states that it is the leading large-scale distributor of groceries, with twenty-two percent of the grocery market share in France. The Complainant states that it employs 133,000 people and had an annual turnover of EUR 48.20 billion in 2019 in France.

The Complainant states that the LECLERC trademark is the surname of the founder of its business, Edouard Leclerc and states that the word has no meaning in the French language, which the Complainant argues makes the LECLERC trademark highly distinctive. The Complainant states that "Oloron" is the name of a city in France in which the Complainant operates a supermarket, and argues that the pairing of the LECLERC trademark with a city name where a LECLERC store is located in the Domain Name is likely to create confusion among Internet users who may believe that the Domain Name is associated with the Complainant's store in that city.

The Complainant contends that the Domain Name is confusingly similar to the Complainant's LECLERC trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of a domain name, a complainant must prove the following three elements:

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (2) the respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it owns rights in the LECLERC trademark. The addition of the word “oloron” in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Under these circumstances, the Panel finds that the Domain Name is confusingly similar to the Complainant’s LECLERC trademark.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides that a respondent can demonstrate rights to or legitimate interests in a domain name by demonstrating one of the following facts:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name at issue in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; or
- (iii) the respondent is 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 at issue.

In this case, the Complainant has put forward a *prima facie* case and no evidence has been presented that the Respondent used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services; that the Respondent is commonly known by the Domain Name; that the Respondent is making a legitimate noncommercial or fair use of the Domain Name; or in any other way refuted the Complainant’s *prima facie* case. The Complainant has alleged that the Respondent is passively holding the Domain Name and presented evidence that shows that typing the URL “<http://leclerc-oloron.com>” into a browser returned a message that the site associated with the URL cannot be reached. The Respondent has not refuted these allegations and evidence. Under the circumstances, there is no basis to find that the Respondent has demonstrated rights to or legitimate interests in the Domain Name. See *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#).

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that the following circumstances are evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name at issue 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 documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Complainant's rights in its LECLERC trademark predate the registration of the Domain Name by at least 18 years, and the Complainant has presented evidence regarding the fame of its mark in France, and has presented evidence that the Complainant operates a supermarket in the city of Oloron, France. The Respondent has not refuted the Complainant's allegations and evidence. The Panel finds that the Complainant has established that the Respondent registered the Domain Name in bad faith.

With respect to the question of bad faith use of the Domain Name, the evidence presented by the Complainant regarding the use of the Domain Name does not fall into any of the circumstances enumerated in paragraph 4(b) of the Policy. The Domain Name is being held passively without any content posted on a website associated with it. [WIPO Overview 3.0](#), section 3.3 states: "From the inception of the UDRP, panelists 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. [...]"

While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." In this case, the totality of the circumstances suggests that the Domain Name is being used in bad faith. Considering the well-known nature of the Complainant's LECLERC trademark in France, it is difficult to imagine a good faith use for the Domain Name by anyone other than the Complainant, and the Respondent has not offered any arguments or provided any evidence to support a finding of actual or contemplated good faith use. The Respondent also concealed his identity using a privacy service.

Accordingly, the Panel finds that the Complainant has met its burden of demonstrating bad faith registration and use in this case.

## 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 <leclerc-oloron.com> be transferred to the Complainant.

*/Michelle Brownlee/*

**Michelle Brownlee**

Sole Panelist

Date: May 18, 2022