

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc - ACD Lec v. Privacy service provided by Withheld for Privacy ehf / Placid Diagou  
Case No. D2022-2462

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Placid Diagou, Côte d'Ivoire.

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

The disputed domain name <lecl-leclerc.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 6, 2022. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 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 July 12, 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 also on July 12, 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 July 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 4, 2022.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on August 18, 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**

According to the Complaint, the Complainant is the French association operating one of the most renowned chain of supermarkets and hypermarkets stores in France. The Complainant's chain of stores and the LECLERC trademarks are well known in France and also in several other European countries. The name of the Complainant refers to the last name of the founder and promoter of the association – Mr. Edouard Leclerc. There are 721 LECLERC branded stores in France and around 100 in the other European countries where the Complainant runs its business. With more than 22% of the grocery market share at the beginning of 2022, the Complainant is one of the leader of the large-scale distribution in France. In 2019, the turnover of the Complainant was EUR 48.20 billion in France, and the Complainant employs approximately 133,000 people.

The Complainant has registered a number of LECLERC trademarks worldwide for a broad range of goods and services related to its activity.

In particular, the Complainant holds the following trademark registration:

- European Union ("EU") Trademark for LECLERC No. 002700656 registered on February 26, 2004, for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

The Respondent appears to be an individual from Côte d'Ivoire. According to the Whols, the disputed domain name was registered in the name of the Respondent on April 9, 2021. According to the evidence submitted with the Complaint, the disputed domain name resolves to website that appears to be a parking page with wording "This site is under construction and coming soon" on the top of the page, and with commercial or pay-per-click (PPC) links.

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

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

The Complainant contends that it has strong rights in LECLERC trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world. Also, the Complainant indicates that its trademark LECLERC and the branded chain of stores are well known in France and in several other European countries.

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's LECLERC trademark as it incorporates the Complainant's registered LECLERC trademark entirely. The additional word "lecl" in the disputed domain name reproduces in the identical way the first part of the Complainant's trademark LECLERC. It could be seen as an abbreviation of the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not authorized the Respondent to use the LECLERC trademark in the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent was fully aware of the Complainant's reputation and the Complainant's trademark rights on the LECLERC trademark when he registered the disputed domain name. The LECLERC trademark is well known and its fame has been confirmed a number of times by prior UDRP panels.

The disputed domain name resolves to a website that appears to be a parking page with wording "This site is under construction and coming soon" on the top of the page.

In addition, the disputed domain name was registered in bad faith for the purpose of fraudulently obtaining funds and personal information from companies and individuals. The Respondent using the mail server operating on the disputed domain name sent an email to a third party representing itself as a representative of the Complainant phishing for information, and possibly trying to extort money.

The use of the disputed domain name by the Respondent is disruptive to the Complainant's business and will harm the significant reputation that exists in the LECLERC trademark, and members of the public would suffer as a result of the Respondent's activity.

Therefore, the disputed domain name has been registered and used by the Respondent in an unfair manner and in bad faith. It is also inconceivable that the Respondent had any good faith intentions at the point of registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has proved its rights in the LECLERC trademark through the EU trademark registration dating back to 2004.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having relevant trademark rights.

The disputed domain name is comprised of the words "lecl" and "leclerc", separated by hyphen and combined with the generic Top-Level Domain ("gTLD") ".com".

Thus, the Panel finds that the disputed domain name incorporates the Complainant's LECLERC trademark entirely.

Furthermore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's LECLERC trademark.

The Panel notes that addition of the letters "lecl" or hyphen to the disputed domain name does not prevent the Complainant's trademark from being recognizable in the disputed domain name.

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the TLD for the purposes of this comparison.

The Panel finds that according to a side-by-side comparison the disputed domain name reproduces the Complainant's LECLERC trademark, and, thus, that the Complainant's LECLERC trademark is recognizable

within the disputed domain name.

Previous UDRP panels have consistently held that the addition of term to a disputed domain name that incorporates a trademark in its entirety typically does not prevent the finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

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

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the domain name. Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant's *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent's rights or legitimate interests to the disputed domain name, and that complainants frequently address to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not involved into a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the evidence provided by the Complainant, the disputed domain name was used for sending at least one email impersonating the Complainant, prominently displaying the LECLERC trademark and the Complainant's official website "www.e-leclerc.com".

According to the Complainant, the Respondent is not an authorized or licensed to use the LECLERC trademark in the disputed domain name, as well as not authorized sending any emails on the Complainant's behalf.

The fact that the Respondent's email sent using the disputed domain name contains links to the official Complainant's website and the LECLERC trademark confirms that the Respondent was well aware that the LECLERC is a trademark of the Complainant, and of the Complainant's activities.

The Panel notes, that as it was found by previous UDRP panels, sending deceptive emails, e.g., to obtain sensitive or confidential personal information is evidence of bad faith use. See section 3.4. of the [WIPO Overview 3.0](#).

The Respondent did not submit a Response or attempted to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Therefore, the Panel also finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities does not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy).

According to the Registrar's information, "Placid Diagou" is the registrant of the disputed domain name. The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name. The Panel concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

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

As the Panel established above, the Complainant's LECLERC trademark was widely used in commerce well before the registration of the disputed domain name on April 9, 2021.

The Panel finds that the Respondent was well aware of the Complainant's LECLERC trademark when registering the disputed domain name. This conclusion is supported by the facts that the disputed domain name is confusingly similar to the Complainant's LECLERC trademark, that the disputed domain name was used to send at least one email prominently displaying the LECLERC trademark and the Complainant's official website "www.e-leclerc.com", and even the name of the Complainant's company manager.

Previous UDRP panels found that bad faith is demonstrated when the Respondent registered the disputed domain name with the purpose of using it for unlawful purposes, profiting from the attempts to solicit business transactions with third parties while impersonating the Complainant, creating a likelihood of confusion and aiming to take undue advantage of the Complainant's reputation and goodwill. See *Minerva S.A. v. TT Host*, WIPO Case No. [D2016-0384](#).

Furthermore, the Panel finds it implausible that the disputed domain name could be used by the Respondent in good faith considering that it is confusingly similar to the Complainant's trademark.

The Respondent failed to submit a response or provide any evidence of a good-faith use or registration of the disputed domain name.

Therefore, under the totality of the circumstances, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 disputed domain name <lecl-leclerc.com> be transferred to the Complainant.

*/Oleksiy Stolyarenko/*

**Oleksiy Stolyarenko**

Sole Panelist

Date: September 1, 2022