

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Host Master,
Transure Enterprise Ltd
Case No. D2022-4911

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 Host Master, Transure Enterprise Ltd, United States of America.

2. The Domain Name and Registrar

The disputed domain name <leclercservice.com> is registered with Above.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 2023, 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 January 9, 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 January 9, 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, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2023.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on February 7, 2023. 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 operates under the name “leclerc” a well-known chain of supermarkets and hypermarkets stores in France, containing about 721 stores, as well as in other countries in the European Union.

The Complainant is the owner of the trademarks LECLERC (“LECLERC trademarks”), including:

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

The Complainant is also owner of numerous domains including the LECLERC trademarks, *inter alia* the domains <mouvement.leclerc> and <e.leclerc>.

The Respondent registered the disputed domain name on September 2, 2022. The Complainant has provided evidence showing that it resolved to a parking page containing commercial Pay-Per-Click (“PPC”) links in relation with the Complainant’s activities.

5. Parties’ Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical to the Complainant’s LECLERC trademarks. It should be stressed that the term “leclerc” has no meaning in French or English and is highly distinctive. The mere addition of the term “service” within the disputed domain name does not lessen the inevitable confusion with the Complainant’s trademarks. On the contrary, this term refers to the range of services offered by the Complainant. Finally, the generic Top-Level Domain “.com” should not be taken into account as it is a compulsory element of a domain name.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. To the best of the Complainant’s knowledge, the Respondent does not own any trademark registrations reflecting the term “leclerc” and is not commonly known under the name “Leclerc”. Furthermore, the Respondent has not been authorized by the Complainant to use the name “Leclerc”. Indeed, the Complainant has not been authorized, licensed, or permitted the Respondent to use any of its LECLERC trademarks or to apply for or use any domain name incorporating the Complainant’s trademarks. Moreover, there is no business relationship existing between the Complainant and the Respondent.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. Considering the great reputation of the LECLERC trademark in France and other countries in the European Union almost 70 years after the opening of the first “Leclerc” store in France, the Respondent must have known about the Complainant’s rights and its services at the time of registering the disputed domain name. The reputation of the Complainant’s LECLERC trademarks has been recognized in numerous decisions issued by the prior UDRP panels. Furthermore, the reservation of a domain name reproducing in the identical way the LECLERC trademarks cannot be in any case a coincidence and clearly demonstrates that the Respondent was perfectly aware of the Complainant’s

trademarks and business. Because of the strong public awareness of the Complainant's trademarks, any attempt to actively use the disputed domain name would inevitably lead to a likelihood of confusion to the source, sponsorship, affiliation, or endorsement of the Respondent's website among Internet users who would inevitably be led to believe that such website would be owned by, controlled by, established by or in some way associated with the Complainant. Moreover, the Respondent, Transure Enterprise Ltd, is listed as Respondent in more than 200 UDRP cases before the WIPO Arbitration and Mediation Center since 2008. The Respondent's bad faith and lack of rights and legitimate interests was recognized many times by prior UDRP panels, for instance in *Association des Centres Distributeurs, E. Leclerc - A.C.D. Lec v. Transure Enterprise Ltd*, WIPO Case No. [D2021-4109](#); *Government Employees Insurance Company ("GEICO") v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2021-3148](#) and *Eurovia v. Above-privacy / Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2022-1417](#).

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of several trademarks consisting of the word "leclerc". Suitable evidence was submitted. Consequently, the Panel finds that the Complainant has proven that it has rights in the LECLERC trademarks.

The disputed domain name contains the LECLERC trademarks entirely with the addition of the term "service" and the generic Top-Level Domain ("gTLD") ".com". Section 1.8 of [WIPO Overview 3.0](#) states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements". Further, section 1.11.1 of [WIPO Overview 3.0](#) states: "The applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such

is disregarded under the first element confusing similarity test.” The gTLD “.com” will therefore be discounted in the Panel’s consideration of confusing similarity. Furthermore, the Panel finds that the LECLERC trademarks within the disputed domain are recognizable, so that the additional term “service” does not prevent a finding of confusing similarity.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#), states, “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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Complainant has not authorized the Respondent to use the Complainant’s trademarks, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Further, the Respondent has not attempted to justify why the disputed domain name was registered.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant, contrary to the fact, which cannot constitute fair use (see [WIPO Overview 3.0](#), section 2.5.1). Moreover, the Respondent has used the confusingly similar disputed domain name to resolve to a website with PPC links that relate to or capitalize on the Complainant’s reputation and trademark, which does not amount to a *bona fide* offering of goods or services (see [WIPO Overview 3.0](#), section 2.9)

Accordingly, the Panel finds that the Complainant has made a *prima facie* showing of the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered or is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Section 3.2.2 of the [WIPO Overview 3.0](#) reads: “Knew or should have known: Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

Considering the reputation and public presence of the Complainant, it is unlikely that the respondent had no knowledge of the LECLERC trademarks. The Panel notes the Complainant’s business interests as operating under the name “leclerc” a well-known chain of supermarkets and hypermarkets stores in France

as well as other countries in the European Union and finds that the word “leclerc” within the disputed domain name suggests, wrongly, that there is a connection between the Respondent and the Complainant. Consideration of the term “service” highlights a confusing similarity with the LECLERC trademarks because it implies an indication of services in the supermarket sector offered under the LECLERC trademarks. Further, from the point of view of the reputation of the LECLERC trademarks, a possibility of a commercial, *bona fide* use of the website to be retrieved under the disputed domain name does not appear plausible. In fact, the Complainant provided evidence showing that the disputed domain resolved to a parking page containing commercial PPC links, which may be related to the Complainant’s activities. Moreover, the Complainant has provided evidence showing that the Respondent has a history of fraudulent registrations of domain names. In light of the lack of any rights to or legitimate interests in the disputed domain name of the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website or affect the commercial activities of the Complainant by creating a likelihood of confusion with the Complainant’s trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 <leclercservice.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: February 17, 2023