

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Host Master,
Transure Enterprise Ltd
Case No. D2023-1531

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 <leclerc-dinan.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 April 6, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 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 (above_privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 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 April 27, 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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2023.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on June 26, 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 is a French association, ACD Lec (Association des centres distributeurs e. leclerc).

The name "Leclerc" refers to the last name of the founder and promoter of the association – Mr. Edouard Leclerc.

The Complainant owns several trademarks LECLERC for this case, it is relevant to mention two trademarks in particular:

- the first trademark corresponds to the European Union trademark LECLERC No. 002700656 filed on May 17, 2002, and registered on February 26, 2004, and is duly renewed since then.
- the second one corresponds to the French trademark LECLERC No. 1307790 was filed and registered on May 2nd, 1985 and is duly renewed since then.

The trademark LECLERC has been used for the services provided by the Complainant that consist in a renowned chain of supermarkets and hypermarkets stores in France for several years. The Complainant has about 721 stores in France and therefore the trademark LECREC is well known in France and also in several other European countries. Therefore, it is important to mention that the trademark LECLERC also carries a good reputation.

The complainant is using their official website "www.e.lecrec".

The disputed domain name was registered on December 1, 2022, and redirected to a blank website containing a link to a website associated with a different domain name.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its LECLERC trademark due to the fact that it includes the complete trademark with the inclusion of the symbol "-" and the geographical name of the city "Dinan" situated in France. Also, the Complainant argues that the Respondent has no rights or legitimate interests with respect to the disputed domain name and finally, that the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it has registered trademark rights in the LECLERC trademark. As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1: "Where the Complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case."

In order to establish the confusing similarity test, panels typically do a side-by-side comparison between the trademark and the domain name to establish if the complainant's trademark is recognizable within the domain name. In this case, the disputed domain name is <leclerc-dinan.com>, which includes the complete trademark LECLERC, with the addition of the hyphen "-" and the term "dinan". This does not prevent a finding of confusing similarity under the first element. 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.

Additionally, it is well established that the generic Top-Level Domain "gTLD" (in this case ".com") is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights (see section 1.11 of the WIPO Overview).

For all the foregoing reasons, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to you of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; 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 or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the

Respondent does come forward with evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

In the present case, the Respondent is in default and did not present any argument or evidence that could help to revert the Complainant contentions.

Therefore, the Panel takes into account that the Complainant contends that the Respondent is not referred to or commonly known by the disputed domain name or any related trademark. Also that the Complainant claims that it has not authorized the Respondent to use the trademark in any way including use in a domain name and that the Respondent's disputed domain name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate non-commercial fair use: Indeed, initially, the disputed domain name was pointing to a parking page of the registrar and mail servers were set up on it.

Considering the risk, both in terms of structure and with regards to the MX servers set up on the disputed domain name, the Complainant sent a cease-and-desist letter and no response was received. The situation of the disputed domain name changed, as it started redirecting alternatively to fraudulent pages and the MX servers remained active. Then, the Respondent's reseller finally came back to the Complainant's representative offering the disputed domain name for sale for USD 250.

The Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not responded, and based on the record, the Panel is unable to conceive any basis upon which the Respondent could have any rights or legitimate interests in respect of the disputed domain name.

This Panel finds that the Respondent is not known under the disputed domain name or the Complainant's trademark and does not make any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name does not resolve towards an active webpage and the offering of sale of the disputed domain name, under the present circumstances, should not constitute a *bona fide* offering of goods and services.

In the present case, the Complainant made a *prima facie* case that the Respondent lacks rights or legitimate interests to which the Respondent failed to respond.

For the foregoing reasons the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2)).

C. Registered and Used in Bad Faith

In order to prevail under the Policy, the Complainant must show that the disputed domain name has been registered and is being used in bad faith.

The Complainant's LECLERC trademarks have been continuously and extensively used for many years and have as a result acquired considerable reputation and goodwill worldwide. Accordingly, the Panel is satisfied that the Respondent must have been aware of the trademark LECLERC when it registered the disputed domain name, noting also that the disputed domain name includes the complete trademark LECLERC, with the addition of the hyphen "-" and the geographical term "Dinan" which is a city in France.

Other Panelists have recognized the existence of a likelihood of confusion between the Complainant's trademarks and the following domain names which included the names of French cities: - leclerc-st-orens.com (WIPO Case No. [D2022-3646](#)) - leclercdon.com (WIPO Case No. [D2022-1869](#)); - recrutement-leclerc-arles.com (WIPO Case No. [D2022-0950](#)); - leclerc-oloron.com (WIPO Case No. [D2022-0992](#)); - fr-leclercsaintaunes.com (WIPO

Case No. [D2020-2516](#)). It should be stressed that the denomination “LECLERC” has no meaning in French or English and is distinctive.

The Panel accepts the Complainant’s submissions that the trademark LECLERC is a distinctive, creative term, and that it is obvious that the Respondent registered the disputed domain name with the intention of referring to the Complainant’s trademark. The Panel further notes, that the disputed domain name was acquired long after the Complainant’s LECLERC trademarks became well-known. In view of the well-known character of the LECLERC trademarks, it is difficult to believe that the Respondent was not aware of the Complainant and its activities, at the time it registered the disputed domain name, other Panelist have resolved a similar opinion, see for example the *Veuve Clicquot Ponsardin v. The Polygenix Group co*, WIPO Case No. [D2000-0163](#).

The simple fact that the Respondent registered the disputed domain name, reproducing in the identical way the Complainant’s trademarks LECLERC is in and of itself evidence of bad faith registration. In any case, the registration of the disputed domain name cannot be a coincidence, “LECLERC” has no meaning in French nor English and is not a dictionary or common word and according to this file and the evidence presented the Respondent does not hold a name or a last name LECLERC. There is no reasonable explanation for choosing this name. Further, the disputed domain name identically reproduces the trademark “LECLERC” with the mere addition of the geographic term “dinan” that refers to a French city, city where the Complainant has a store and offers its services. The composition of the disputed domain name could lead the Internet users to fall on the website referring to the disputed domain name as an official domain name of the Complainant.

The Panel also finds that the main intention of the Respondent when registering the disputed domain name was to sell it in excess of his out-of-pocket costs directly related to the registration of the disputed domain name. As indicated above, the Complainant’s sent a letter to the Respondent and two other reminders after the first letter without any response from the Respondent and the Respondent’s reseller finally came back to the Complainant’s representative offering the disputed domain name for sale for USD 250: “The client is willing to release this domain leclerc-dinan.com for \$250”.

The Panel finds that the disputed name was registered with no intention of legitimate use but only for a commercial purpose, namely, to sell the disputed domain name to the Complainant at a higher price than its regular registration price. The amount of USD 250 is likely exceeding the Respondent’s costs to the registration of the disputed domain name <leclerc-dinan.com>. For all the foregoing reasons The Panel finds that according the Paragraph 4 (b) (i) of the Policy, is evidence of the registration and use of a domain name in bad faith: “circumstances indicating that you have registered or you have acquired the domain name 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 your documented out-of-pocket costs directly related to the domain name”. Therefore, the disputed domain name was registered in bad faith. It follows from the above elements that the Respondent has undoubtedly registered the disputed domain name precisely because he was well-aware of the existence of the Complainant’s activity and organization and of his trademarks LECLERC.

It is clear that the disputed domain name is used in bad faith. When we take into account that the Respondent has no right or legitimate interest in respect of the disputed domain name. Above all when the user clicks upon the disputed domain name it immediately points alternative to fraudulent pages causing significant damage to the reputation and prestige that comes with the trademark LECLERC supermarkets. Such use is deprived of any real substantial offer of goods and services. On the contrary, Internet users will believe that the disputed domain name is endorsed by the Complainant while it is not the case.

Besides, as indicated above, MX servers are still configured to operate with the disputed domain name. The existence of these MX servers leads to believe that the Respondent could use the MX servers for phishing purposes by sending fraudulent emails. This possibility could create a risk that users may think the Respondent may also be engaged in a phishing scheme aiming to send fraudulent emails to the internet users by misusing the Complainant's identity and unlawfully obtain personal information by making them believe that they are dealing with the Complainant regarding its activities of contests.

The Panel finds that at the time of the filing of the Complaint and at the time of the decision, the disputed domain name resolved to a blank website containing a link to a website associated with a different domain name. With this use, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location

For all the foregoing reasons the Panel finds that the disputed domain name <leclerc-dinan-com> has been registered and used in bad faith and fulfils the third condition 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 <leclerc-dinan.com>be transferred to the Complainant-

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: July 4, 2023