

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc v. Donat Denoix
Case No. D2024-1067

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc, France, represented by MIIP MADE IN IP, France.

The Respondent is Donat Denoix, France.

2. The Domain Name and Registrar

The disputed domain name <primes-energieleclerc.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 11, 2024. On March 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 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 March 14, 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 March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 5, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on April 12, 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 the French Association of E. Leclerc Distribution Centers, is the French Association of E. Leclerc Distribution Centers, which has grown in France and in other European countries since the first store under the Leclerc name was opened by its founder Edouard Leclerc 71 years ago. The Complainant now operates 735 supermarkets and hypermarkets in France and around 100 in other European countries, with about 140,000 employees and a turnover in 2022 of EUR 55.6 billion. The Complainant is a leader of large-scale distribution in France.

Since 2015, the Complainant has developed a wide offer under the Energies E. Leclerc concept and brand of energy-related products and services, such as car refueling stations, charge stations for electric cars, energy bonuses and gift cards for energy saving and fuel purchases.

The Complainant owns a large portfolio of registered trademarks containing the term LECLERC, including, inter alia, the French Trade Mark No. 1307790, registered on May 2, 1985, and the European Union Trade Mark No. 002700656, registered on February 26, 2004 (together hereinafter referred to as “the Mark”).

It also owns numerous domain names, including the <energies.leclerc> domain name, registered on October 5, 2017, which is the Complainant’s official website presenting its Energies E. Leclerc concept.

The disputed domain name was registered on December 24, 2023. The Complainant provided evidence that it first resolved to a page explaining how to request an energy bonus with the Complainant and displaying information on the services provided by the Complainant especially its energy offer Energies E. Leclerc. At the time of this decision, the disputed domain name directs to an error page.

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.

Notably, the Complainant contends that:

- (i) the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The addition of the terms in French “primes” and “energie” before the Mark does not serve to distinguish the disputed domain name from the Mark.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name, by which he is not commonly known. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner or consented to such use, and that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Respondent knew of the Mark when registering the disputed domain name and is using it in bad faith by resolving to a website displaying information on the Energies E. Leclerc concept.

The Complainant requests 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

6.1. Procedural Aspects - Failure to respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

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.

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 entirety of the Mark is reproduced within the disputed domain name. Although the addition before the Mark of the terms in French "primes" and "energie" (separated by a hyphen) may bear on the assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well established that a generic Top-Level-Domain (“gTLD”) does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity.

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.

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.

The Panel finds that the composition of the disputed domain name, combining the Mark with the terms in French relevant to the Complainant “primes” and “energie” separated by a hyphen, carries a risk of implied affiliation, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In the present case, the disputed domain name initially resolved to a webpage which provided information about the services and bonuses offered by the Complainant as well as some reviews from users regarding the Complainant’s energy bonus. The Panel finds that the disputed domain name is confusingly similar to the Mark and is targeting Internet users in relation to the energy business, with a phishing intent. Such circumstances create a risk to Internet users.

Moreover, UDRP Panels have held that the use of a domain name for illegal activity such as phishing, as evidenced in this case, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant’s arguments that the

Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name confusingly similar to the Mark.

The Panel also notes the distinctiveness or reputation of the Mark, as recognized by many UDRP panels which have declared the Mark to be famous or well known (see for instance *Association des Centres Distributeurs E. Leclerc A.C.D Lec v. Wang Lian Feng*, WIPO Case No. [D2018-0659](#); *Association des Centres Distributeurs E. Leclerc v. Registration Private, Domains By Proxy, LLC / Quentin Leclerc*, WIPO Case No. [D2018-1185](#); *Association des Centres Distributeurs E. Leclerc v. Privacy Protection / Andrei Kislovodskii*, WIPO Case No. [D2019-0108](#); *Association des Centres Distributeurs E. Leclerc A.C.D Lec v. Domain Administrator, See PrivacyGuardian.org / cunshuo zhang*, WIPO Case No. [D2019-1580](#); *Association des Centres Distributeurs E. Leclerc v. WhoisGuard Protected, WhoisGuard, Inc. / auchanlove auchanlove*, WIPO Case No. [D2021-0031](#); *Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy, See PrivacyGuardian.org / pastal dolly malhotra*, WIPO Case No. [D2021-0037](#); *Association des Centres Distributeurs E. Leclerc A.C.D Lec v. Privacy Service Provided by Withheld for Privacy ehf / Name Redacted and Chantal Humbert*, WIPO Case No. [D2021-3902](#); *Association des Centres Distributeurs E. Leclerc A.C.D Lec v. Contact Privacy Inc. Customer 12410913767 / Leclerc S.A Intermarché*, WIPO Case No. [D2021-4149](#)).

The Panel thus finds it impossible to believe that the Respondent, who is apparently located in France (where the Complainant is headquartered and has the most operations), was unaware of the Mark prior to its registration of the disputed domain name.

In this case, the Respondent, whose primary intention was likely to deceive Internet users and unfairly capitalize on the Mark, has furthermore used the disputed domain name for a phishing activity.

URDP panels have held that the use of a domain name for illegal activity, such as phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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 that the Complainant has established the third element 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 <primes-energieleclerc.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: April 19, 2024