

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Tudor Luca
Case No. D2024-2437

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec, France, represented by MIIP MADE IN IP, France.

The Respondent is Tudor Luca, Romania.

2. The Domain Names and Registrar

The disputed domain names <leclerc.fan> and <leclerc.fans> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 14, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 14, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 19, 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 June 20, 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 June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 15, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 25, 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 a French association named after its founder and promoter, Mr. Edouard Leclerc. Presently, the Complainant counts with 735 supermarkets in France, as well as stores in Poland, Portugal, Slovenia, and Spain, having had a turnover of EUR 55.6 billion in 2022 in France, and counting with approximately 140,000 employees.

The Complainant is the owner of the following, amongst others, trademark registrations (Annex 4 to the Complaint):

- European Union trademark registration No. 002700656 for the word mark LECLERC, filed on May 17, 2002, registered on February 26, 2004, subsequently renewed, in all classes; and
- French trademark registration No. 1307790 for the word mark LECLERC, registered on May 2, 1985, subsequently renewed, in classes 01-35 and 39.

The disputed domain names were registered on March 14, 2024, and presently resolve to parked webpages displaying Pay-Per-Click ("PPC") links, also counting with Mail Exchange ("MX") servers configured to them.

On April 14, 2024, April 22, 2024, April 26, 2024, and May 3, 2024, the Complainant's representative sent notices to the Registrar and to the email addresses relating to the disputed domain names Whols.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's LECLERC well-known trademark which is entirely reproduced in the disputed domain names.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names given that:

- a. the Respondent is not named nor commonly known by the disputed domain names, or holder of any rights over the name and trademark LECLERC;
- b. the Respondent has not been authorized, licensed, or permitted to use any of the Complainant's trademarks or to apply for or use of any domain names incorporating the Complainant's trademarks;
- c. the Respondent is not using the disputed domain names in connection with any legitimate noncommercial or fair use without intent for commercial gain, rather unduly profiting from the commercial links available at the disputed domain names' webpages; and
- d. the same mail servers have been configured in relation to the disputed domain names in a risk of fraudulent use such as phishing.

As to the registration and use of the disputed domain names in bad faith, the Complainant asserts that the Complainant's trademark is a well-known trademark in France and several other European countries, having the Respondent clearly targeted the Complainant when registering the disputed domain names and any use

of the disputed domain names inevitably lead to a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the disputed domain names with the Complainant. In addition to that, the Respondent's choice to retain a privacy protection service and the configuration of the same MX servers in connection with the disputed domain names characterize a high risk of fraudulent use of the disputed domain names by the Respondent.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain names.

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 names. 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 names. Accordingly, the disputed domain names are identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 non-exclusive list of circumstances that may indicate the Respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in choosing not to respond, has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the disputed

domain names. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden is still on the Complainant to first make a prima facie case against the Respondent (being the overall burden of proof always with the Complainant, but once the 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).

In that sense, the Complainant indeed states that the Respondent has not been authorized, licensed, or permitted to use any of the Complainant's trademarks or to apply for or use of any domain names incorporating the Complainant's trademarks.

Also, the absence of any indication that the Respondent holds rights in a term corresponding to the disputed domain names, or any possible link between the Respondent and the disputed domain names that could be inferred from the details known of the Respondent or the webpages available at the disputed domain names, corroborate with the Panel's finding of the absence of rights or legitimate interests. The Panel notes that the disputed domain names have been registered with the gTLD ".fan" and ".fans", and finds that merely registering a domain name with a ".fan" or ".fans" gTLD is not sufficient to qualify as genuine and noncommercial fair use, particularly since the use of the disputed domain names is for a website with PPC links that do not have a "fan" nature, and therefore, insufficient for a finding of legitimate fair use. See *L'Oréal v. Private by Design, LLC / Yong Sik Choi*, WIPO Case No. [D2019-3154](#).

Therefore, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain names. The second element of the Policy has also been met.

C. Registered and Used in Bad Faith

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain names:

- a) the Complainant is a long-established association, being its name and registered trademark well-known;
- b) the potential risk that the disputed domain names may be used in connection with fraudulent emails noting the active MX serves, and the identity of the disputed domain names with the Complainant's trademark;
- c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names;
- d) the Respondent's use of the disputed domain names in connection with webpages displaying PPC links related to the Complainant's activities; and
- e) the Respondent's choice to retain a privacy protection service.

The Panel further notes the fame of the LECLERC trademarks that is reproduced in its entirety within the disputed domain names, being identical to the Complainant's trademark, and the lack of the Respondent's rights or legitimate interests. The Panel finds on the balance of probability that the Respondent chose the disputed domain names due to its identity with the famous LECLERC trademark, given that the disputed domain names are so obviously connected with the Complainant its LECLERC trademark, and based on the circumstances of the case the Panel finds that Respondent's actions suggest some sort of "opportunistic bad faith" for the purposes of the Policy. Further, previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names.

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 names <leclerc.fan> and <leclerc.fans> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: August 8, 2024