

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. yong xiong mei, meiyong xiong  
Case No. D2022-0950

### **1. The Parties**

Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec., France, represented by Inlex IP Expertise, France.

Respondent is yong xiong mei, meiyong xiong, China.

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

The disputed domain name <recrutement-leclerc-arles.com> is registered with CNOBIN Information Technology Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2022. On March 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 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 Complainant on March 21, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 22, 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 Respondent of the Complaint, and the proceedings commenced on March 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 13, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on April 21, 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**

Complainant is Association des Centres Distributeurs E. Leclerc-A.C.D. Lec, a French company that owns a chain of supermarkets and stores in France. Complainant owns a valid and subsisting registration for the LECLERC trademark in the European Union, namely Reg. No. 002700656, registered on February 26, 2004.

Respondent registered the disputed domain name <recrutement-leclerc-arles.com> on December 29, 2021. At the time this Complaint was filed, the disputed domain name resolved to a Chinese-language home page for “BOB & Boyu Sports” (BOB&博鱼体育), which when translated into English asserts that “BOB Sports has legal licenses issued by the European Malta Gaming Authority (MGA) and the Gaming Commission (PAGCOR). Registered in the British Virgin Islands, it is a legal gaming company recognized by the International Gaming Association”.

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

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

Complainant asserts ownership of the LECLERC trademark and has adduced evidence of a trademark registration in the European Union, registered on February 26, 2004. The disputed domain name is confusingly similar to Complainant's LECLERC trademark, according to Complainant, because it entirely incorporates Complainant's LECLERC trademark, with the additional term “arles”, which is the name of a French city where one of Complainant's stores is located, as well as the term “recrutement”, which translates from French to “recruitment” in English.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on the lack of evidence that Respondent is commonly known by the disputed domain name, that Respondent has not been authorized by Complainant to use the LECLERC trademark, and the lack of evidence that Respondent has made use of the disputed domain name in connection with any *bona fide* offering of goods or services.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith because the LECLERC trademark is well-known in France and in several other European countries, Respondent registered the disputed domain name to target personnel recruitment in a French city where one of Complainant's stores is located, and Respondent's failure to respond to Complainant's cease and desist correspondence.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default 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. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

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

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the LECLERC trademark has been registered in the European Union. Thus, the Panel finds that Complainant's rights in the LECLERC trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's LECLERC trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's LECLERC trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".com" in the disputed domain names, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the French city "arles" and French-language term "recrutement" do not prevent a finding of confusing similarity between Complainant's LECLERC and the disputed domain name. WIPO Overview, section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("[E]ach of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

In view of Complainant's registration for the LECLERC trademark, and Respondent's incorporation of that trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

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

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second

element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by the Registrar for the disputed domain name as “yong xiong mei, meiyong xiong”, is not commonly known by the disputed domain name or Complainant’s LECLERC trademark.

Panels have held that configuring a disputed domain name to resolve to websites promoting gambling services does not constitute a legitimate noncommercial or fair use within the terms of paragraph 4(c)(iii) of the Policy. See e.g. *Cintas Corporation v. Bing Die Chen, Chen Bing Die*, WIPO Case No. [D2019-2491](#); *Alibaba Group Holding Limited v. Domain Administrator, See PrivacyGuardian.org / Joseph Ong*, WIPO Case No. [D2019-2088](#) (Finding no rights or legitimate interests where “Respondent’s sole intent in registering and maintaining the Disputed Domain Name is misleadingly to divert consumers looking for Complainant’s services and profit from Complainant’s trademarks by advertising third party gambling services”); *Bytedance Ltd. v. Stanley Billy, Natasha Selly*, WIPO Case No. [D2020-1749](#) (“Respondents’ use of the Domain Names in this manner [to resolve to websites containing gambling contents] does not give rise to any rights or legitimate interests in them”); *Costco Wholesale Membership Inc., Costco Wholesale Corporation v. Marquita Rivera*, WIPO Case No. [D2014-0793](#) (“Respondent is using the Domain Name in connection with a Chinese language website that offers links to gambling services and there is nothing in the website printout to suggest that the name of the Respondent or Website is ‘CostcoStory.’ This activity cannot, under the circumstances, be considered a *bona fide* offering of goods or services”). Here, Respondent has configured the disputed domain name to resolve to a Chinese-language home page for a putative entity named “BOB & Boyu Sports”, which when translated into English asserts that “BOB Sports has legal licenses issued by the European Malta Gaming Authority (MGA) and the Gaming Commission (PAGCOR). Registered in the British Virgin Islands, it is a legal gaming company recognized by the International Gaming Association”. This home page features no legitimate connection to Complainant or its services. The only inference open to the Panel is that Respondent has gratuitously attempted to derive a profit from the goodwill of the LECLERC trademark with French and Chinese language consumers.

In view of the absence of any evidence supporting any rights or legitimate interests in the disputed domain name, and Respondent’s association of Complainant’s LECLERC trademark with online gambling services, the Panel concludes that Complainant has established the second element of the Policy.

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

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent’s documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

Panels have also recognized bad faith under paragraph 4(b)(iv) of the Policy where a disputed domain name is used to promote gambling websites by creating a likelihood of confusion with the complainant's trademark. See *Costco Wholesale Membership Inc., Costco Wholesale Corporation v. Marquita Rivera*, Case No. [D2014-0793](#); *Alibaba Group Holding Limited v. Domain Administrator, See PrivacyGuardian.org / Joseph Ong*, Case No. [D2019-2088](#) ("Respondent's use of the disputed domain name, therefore, falls under paragraph 4(b)(iv) of the Policy, as the Respondent intentionally attracts Internet users to its own website by creating a likelihood of confusion with the Complainant's mark, and the Respondent commercially benefits from this confusion by offering gambling services at its site as well as from click through advertising for third party gambling services"); *United Parcel Service of America, Inc. v. Interмос/Alex Storm*, WIPO Case No. [D2004-0211](#) citing *Encyclopaedia Britannica Inc. v. Shedon.com*, WIPO Case No. [D2000-0753](#) ("[...] using a domain name this is confusingly similar to another's trademark, to hyperlink to a gambling site constitutes bad faith. This Panel agrees."). Here, the carefully chosen composition of the disputed domain name, including the French city "arles" and the French word "recrutement", suggests that it was registered with a bad faith purpose. Respondent's decision to link the disputed domain name to a Chinese language gambling website further establishes the bad faith of Respondent, and the fact that Respondent is engaged in an attempt to derive financial advantage from the distinctive LECLERC trademark in relation to which Respondent has no rights whatsoever.

The Panel further concludes that failure by Respondent to answer Complainant's cease and desist letter "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith". See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

In view of Respondent's intentional targeting of Complainant's LECLERC trademark in the disputed domain name, as well as the French city of Arles where Complainant is located, and the French word for recruitment, plus Respondent's configuration of the disputed domain name to resolve to the home page for putative online gambling services, and Respondent's failure to respond to Complainant's cease and desist correspondence and this Complaint, the Panel concludes that 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, <recrutement-leclerc-arles.com>, be transferred to Complainant.

/Phillip V. Marano/

**Phillip V. Marano**

Sole Panelist

Date: April 29, 2022