

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc ACD Lec v.
Rene Daniel Noel, Rene Daniel Noel
Case No. D2022-0951

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - ACD Lec, France, represented by Inlex IP Expertise, France.

The Respondent is Rene Daniel Noel, Rene Daniel Noel, France.

2. The Domain Name and Registrar

The disputed domain name <eleclerc-groupe.com> is registered with Domain.com, LLC (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 18, 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 the Complainant on March 21, 2022 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 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 the Respondent of the Complaint, and the proceedings commenced on March 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 14, 2022.

The Center appointed William Lobelson as the sole panelist in this matter on April 28, 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

The Complainant is Association Des Centres Distributeurs E. Leclerc, a French and International retail group, devoted to the operation of hypermarkets.

The Complainant is the owner of numerous trademarks for or incorporating LECLERC and E LECLERC, *inter alia*:

- European Union trademark E LECLERC No. 002700664 filed on May 17, 2002 and registered on January 31, 2005;

- European Union trademark E LECLERC device No. 011440807 filed on December 5, 2012 and registered on May 27, 2013.

The disputed domain name is <eleclerc-groupe.com>, registered on December 21, 2021. It resolves to an inactive webpage, while a MX email server was set up therewith.

The Complainant served a cease-and-desist letter to the Respondent on February 18, 2022, through the intermediary of its Registrar, which only led to the deactivation of the MX email server associated with the contested disputed domain name, but not the cancellation or grant back of the same.

The Complainant filed the present Complaint on March 17, 2022.

The identity of the Respondent was disclosed and revealed that the Respondent had declared a place of residence in France.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademarks, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used 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

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and

(iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

The Complainant is the owner of a number of E LECLERC formative trademarks, all registered and used in relation with retail services.

The disputed domain name is <eleclerc-groupe.com>. It reproduces the Complainant's trademark E LECLERC in its entirety.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the term "groupe" would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

(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 and services;

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no 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 Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent is not commonly known under the disputed domain name, does not own any proprietary rights in the name "E LECLERC GROUPE", and does not make any *bona fide* use – neither commercial nor noncommercial, of the same.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has substantiated the fact that its trademark E LECLERC, which has been registered and used for years, now benefits from a high level of public's awareness, particularly in France. Earlier UDRP decisions have acknowledged the Complainant's trademark reputation:

Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy, See PrivacyGuardian.org / postal dolly Malhotra, WIPO Case No. [D2021-0037](#); *Association des Centres Distributeurs E. Leclerc v. WhoisGuard Protected, WhoisGuard, Inc. / auchanlove auchanlove*, WIPO Case No. [D2021-0031](#); *Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. WhoisGuard Protected, WhoisGuard, Inc. / yop poyo*, WIPO Case No. [D2020-2142](#); *Association des Centres Distributeurs E. Leclerc v. Privacy Protection / Andrei Kislovodskii*, WIPO Case No. [D2019-0108](#); *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 - ACD Lec contre Guziewicz Ryszard*, Litige OMPI No. [D2018-0482](#); *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 - A.C.D Lec v. Domain Administrator, See PrivacyGuardian.org / cunshuo zhang*, WIPO Case No. [D2019-1580](#); *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Domain Administrator, See PrivacyGuardian.org / Jugo Patel*, WIPO Case No. [D2019-0932](#).

When the identity of the Respondent was disclosed by the Registrar, it was found that that the said Respondent had declared a place of residence in France. Due to the longstanding and use of the Complainant's mark in France, the Respondent could not reasonably be unaware of the Complainant's rights when it registered the disputed domain name.

The Panel infers from the above that the Respondent acted in bad faith when it registered the disputed domain name.

It is further noted by the Panel that the disputed domain name is not being actively used by the Respondent, and does not resolve to any active web page with substantive content.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name, does not prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark and no response to the Complaint having been filed. UDRP panels may draw inferences about whether a domain name is used in bad faith given the circumstances surrounding registration.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration

agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

Such passive holding is to be regarded as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

See also, *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#): “Respondent knew or should have known that the Domain Name included Complainant’s CREDIT MUTUEL well-known trademark. [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith.”

The Panel finds therefore that the passive holding of the disputed domain name in this case does not prevent a finding of bad faith.

In addition to the above, the Complainant has established that an email server had been configured on the disputed domain name, thus inducing a likelihood that the Respondent might have contemplated to use the disputed domain name for potential fraudulent use of an email address incorporating the Complainant’s trademark and/or phishing purposes (*Statoil ASA v. Domain Admin, Privacy Protection Service Inc D/B/A PrivacyProtect.org /Nicolas Kerry*, WIPO Case No. [D2017-0046](#)).

Consequently, in view of all the above circumstances, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

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 <eleclerc-groupe.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: April 29, 2022