

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. Amandine De Smet

Case No. D2022-0981

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 Amandine De Smet, France.

2. The Domain Name and Registrar

The disputed domain name <e-leclerc-fr.org> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2022. On March 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 23, 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. On March 29, 2022, the Center sent an email communication to the Complainant on providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also sent an email communication regarding the language of the proceeding in both English and Russian. The Complainant filed an amended Complaint on March 31, 2022. The Respondent did not submit any comments regarding the language of the proceeding.

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 in both Russian and English, and the proceedings commenced on April 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 29, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on May 13, 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, Association des Centres Distributeurs E. Leclerc – A.C.D. Lec, is a renowned chain of supermarkets and hypermarkets stores in France. According to the Complainant, it has about 721 stores in France and around 100 stores in the other European countries. With more than 20% of the market share on all products, the Complainant is one of the leader of the large-scale distribution in France. In 2019, the turnover of the Complainant was EUR 48.20 billion in France, and the Complainant employs approximately 133,000 people.

The Complainant is the owner of several trademark registrations for the trademarks E LECLERC in various jurisdictions throughout the world, including, but not limited to, European Union Trademark Registration No. 002700664, No. 011440807 registered on January 31, 2005 and May 27, 2013 respectively.

The Complainant's E LECLERC trademarks have been recognized as famous in many earlier decisions (e.g. *Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy*, See [PrivacyGuardian.org / pastaldolly Malhotra](https://www.privacyguardian.org/pastaldolly-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 – A.C.D. Lec v. Privacy Protection / Andrei Kislovodskii*, WIPO Case No. [D2019-0108](#)).

The Disputed Domain Name <e-leclerc-fr.org> was registered on December 30, 2021. The Disputed Domain Name resolves to an inactive website.

The Complainant sent a Cease and Desist letter to the Respondent on February 10, 2022 and two reminders on February 17 and 24, 2022, requesting for a transfer of the Disputed Domain Name. However, the Respondent did not respond to the Cease and Desist letter.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant submits that the Complainant is the owner of trademark registrations for E LECLERC in many jurisdictions. Further, the Complainant contends that its chain of stores and trademarks E LECLERC are well-known in France and also in several other European countries.

Second, the Complainant asserts that the Disputed Domain Name is confusingly similar to the trademarks E LECLERC owned by the Complainant since the Disputed Domain Name incorporates the Complainant's trademarks E LECLERC in its entirety, and the addition of the letters "fr" is insufficient to avoid confusing similarity. Instead, the letters "fr" increase the likelihood of confusion as it corresponds to the ISO code of France which is the country of the Complainant.

Finally, the Complainant argues that the generic Top-Level Domain ("gTLD") ".org" should not be taken into account under the first element as it is a compulsory element of a domain name.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant contends that the content of the website under the Disputed Domain Name and its Whois details, do not indicate that:

- the Respondent is commonly known under the term E LECLERC. Besides, the Respondent is an individual whose name does not include the term LECLERC;
- the Disputed Domain Name is linked to an official registered company named E LECLERC;
- the Respondent has rights, including trademark rights, in the term E LECLERC.

Second, the Complainant submits that the Complainant has not authorized, licensed, or permitted the Respondent to use any of its trademarks, including E LECLERC or to apply for or use any domain name incorporating the Complainant's trademarks. Further, there is no business relationship existing between it and the Respondent.

Furthermore, the Complainant contends that the 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.

Finally, the Complainant contends that the registration of the Disputed Domain Name by the Respondent under anonymity is commonly considered as a lack of rights or legitimate interests.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant contends that Disputed Domain Name was registered in bad faith due to the followings:

- the Respondent, who is being located in France, was aware of the Complainant's activities and the trademarks E LECLERC when it registered the Disputed Domain Name given the distinctiveness and great reputation of the trademarks E LECLERC in France and several other European countries;
- the Respondent's registration of the Disputed Domain Name cannot be a coincidence and thus, is itself evidence of bad faith registration given nature of the Disputed Domain Name (a domain name comprises of the Complainant's trademarks E LECLERC and the letters "fr" referring to the ISO code of France);
- the Respondent's concealment of its identity when registering the Disputed Domain Name is indicative of bad faith. Furthermore, it seems that the Disputed Domain Name was registered under a false identity or by impersonating an individual;
- because of the strong public awareness of its trademarks, any active use of the Disputed Domain Name would inevitably lead to a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website among Internet users.

Second, the Complainant argues that the Disputed Domain Name is used in bad faith due to the followings:

- the Disputed Domain Name creates the confusion with the Complainant's activities since the Respondent has no right or legitimate interest in it;
- the Disputed Domain Name points to the hosting provider Plesk's default page which should not be considered as a use in good faith as such use is deprived of any real and substantial offer of goods and/or services;
- the Disputed Domain Name disrupts the Complainant's business and cause harm to the Complainant's brand image since the Internet users and the Complainant's customers may wrongly believe that the website under Disputed Domain Name is the Complainant's site or that the Complainant's website is not correctly functioning or has been hacked.
- The Complainant tried to resolve this matter amicably, but the Respondent did not respond the Complainant's Cease and Desist letters.

With the said arguments, 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

A. Procedural Issues

(I) The Respondent's Identity

The Panel notes that at the time the Complaint was filed on March 17, 2022, the Respondent was identified as "Protection of Private Person". On March 23, 2022, the Registrar revealed the underlying registrant "Amandine De smet". The Center sent an email communication to the Complainant on March 29, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On March 31, 2022, the Complainant filed an amended Complaint, adding the underlying registrant disclosed by the Registrar.

(II) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Russian.

As the Complaint was filed in English, the Center, in its notification dated March 29, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by April 1, 2022.

On March 31, 2022, the Complainant submitted a request that English be the language of the proceeding.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

- (i) the fact that the Complainant, a French entity, does not appear to be able to communicate in Russian, and therefore, if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;
- (ii) the Respondent did not object for English to be the language of the proceeding, and did not submit a Response in either English or Russian.

Therefore, for the purpose of easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(III) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the disputed domain name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in and to the trademarks E LECLERC, which were registered in a number of countries well before the registration of the Disputed Domain Name.

Second, the Disputed Domain Name comprises the Complainant's E LECLERC trademarks, in which the Complainant has exclusive rights. The difference between the Disputed Domain Name and the trademark is the addition of the hyphen marks and the suffix "fr", which is the common short form of "France", the name of the country where both the Complainant and the Respondent reside. As such, the Panel finds that the trademarks E LECLERC remain clearly recognizable in the Disputed Domain Name. It is well established that the addition of terms or letters to a trademark does not prevent a finding of confusing similarity, as it was found in previous UDRP decisions (see, e.g., *Supercell Oy v. See Privacy Guardian.org / Mediastack*, WIPO Case No. [D2017-2177](#); *Johnson & Johnson v. Tung Nguyen*, WIPO Case No. [D2017-1635](#)).

Third, the Panel finds, similarly to other UDRP panels, that the addition of the gTLD ".org" to the Disputed Domain Name does not constitute an element as to avoid confusing similarity for the Policy purposes (see,

e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *The Coca-Cola Company v. David Jurkiewicz*, WIPO Case No. [DME2010-0008](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#))

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's E LECLERC trademarks, and paragraph 4(a)(i) of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

The Panel finds that the Complainant has *prima facie* established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not refute the Complainant's contentions.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the Complainant, once a *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted providing arguments or evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission or authorization in any kind to use the Complainant's E LECLERC trademarks has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to E LECLERC. Thus, the Panel finds that the Respondent has no rights in E LECLERC.

The Panel finds, according to what the Complainant established and similar to other UDRP panels, that the E LECLERC trademarks are recognized as a famous trademark, at least, in France, where both the Complainant and the Respondent reside (See, e.g. *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 – A.C.D. Lec v. Privacy Protection / Andrei Kislovodskii*, WIPO Case No. [D2019-0108](#)).

In addition, given that the Disputed Domain Name comprises the famous trademarks E LECLERC in its entity, adding the term “fr” at the end, the Respondent is seen as tending to suggest sponsorship or

endorsement by the trademark owner (see section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)")).

The Disputed Domain Name is resolving to an inactive website as of the date of this decision. The Panel also notes that it has been nearly 5 months from the registration of the Disputed Domain Name to the date of this decision, so the Respondent has had sufficient time to build its website under the Disputed Domain Name if it has such intention. However, no evidence is available on the Respondent's preparation to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Hence, in absence of this evidence, the Panel is of the view that paragraph 4(c)(i) is not met.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, as it appears following the Complainant's assertions and evidence with regard to the Respondent's registration of the Disputed Domain Name, the Respondent had full knowledge of the E LECLERC trademarks and had an intention to gain profit by riding on the goodwill and reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(i) 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; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively in other circumstances.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and therefore, did not refute the Complainant's contentions.

The Panel further finds that the Complainant's E LECLERC trademarks have been registered in several countries. As mentioned in the section C above, the Panel finds that the trademarks E LECLERC are famous, at least in France, where both the Complainant and Respondent reside.

Given the famous nature and wide use of the E LECLERC trademark by the Complainant, which predated the registration date of the Disputed Domain Name, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, the Panel is of the view that the nature of Disputed Domain Name, incorporating the Complainant's famous trademarks plus the term "fr", indicates itself that the Respondent deliberately selected the Disputed Domain Name. The Panel considers such registration is an attempt by the Respondent to take advantage of the Complainant's goodwill. See the section 3.2.1 of the [WIPO Overview 3.0](#).

It is further noted that as of the date of this Decision, the Disputed Domain Name has not been used. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of [WIPO Overview 3.0](#)).

In light of this doctrine, the Panel finds that at the time of registration of the Disputed Domain Name, the Complainant had considerable reputation in the E LECLERC trademarks in France where the Respondent appears to be located. Hence, the Panel is of the view that the Respondent intentionally chose to register the Disputed Domain Name comprising of the Complainant's E LECLERC trademarks and the element "fr", in order to somehow confuse Internet users that the Disputed Domain Name may have a connection with the Complainant. Further, the Respondent has failed to submit a response and/or to provide any evidence of actual or contemplated good faith use of the Disputed Domain Name. Therefore, the Panel considers that it is implausible for the Respondent to engage in any good faith use of the Disputed Domain Name.

Taking into account all of the above, the Panel finds that the Disputed Domain Name was registered and used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

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 <e-leclerc-fr.org> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: May 27, 2022