

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. Raymond Nnamani

Case No. D2022-4799

### **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 Raymond Nnamani, Côte d'Ivoire.

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

The disputed domain name <soc-eleclerc.com> is registered with Network Solutions, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 14, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 22, 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 December 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 25, 2023.

The Center appointed Archibald Findlay S.C. as the sole panelist in this matter on February 2, 2023. 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 following facts and circumstances are to be found in the Complaint and its Annexures and, in the absence of challenge, can be accepted as background.

The Complainant is a French association, A.C.D. Lec (ASSOCIATION DES CENTRES DISTRIBUTEURS E. LECLERC). LECLERC refers to the last name of the founder and promoter of the association – Mr. Edouard LECLERC.

The Complainant owns several trademarks E LECLERC and notably:

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

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

These trademarks have been filed and registered prior to the disputed domain name.

The Complainant's licensees are authorized to exploit the Complainant's intellectual property rights, including its trademark rights, in the United States of America, Panama, and elsewhere.

The disputed domain name was registered with the Registrar on October 21, 2022. The disputed domain name resolves to "coming soon" page and it appears to have been used to send fraudulent emails.

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

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

The Complainant contends that E LECLERC is one of the most renowned chain of supermarkets and hypermarkets stores in France and relies on extracts from the following websites in support of this: "www.mouvement.leclerc"; "www.e.leclerc"; "www.lsa-conso.fr/les-ventes-d-e-leclerc-ont-progresse-de-3-en-2021,404376"; and "www.kantarworldpanel.com/en/grocery-market-share/france".

It has about 721 stores in France, located all over the country, and the Complainant's chain of stores and the E LECLERC trademarks are well known in France and in several other European countries.

The Complainant's attention came upon the registration of the disputed domain name made on October 21, 2022, which incorporates the whole of the Complainant's trademark E LECLERC.

The element "soc" is a very common abbreviation of the generic French term "société" ("company" in English) and thus does not lessen the inevitable risk of confusion with the Complainant's trademarks as it could refer to the legal form of the Complainant.

It should be stressed that the denomination "E LECLERC" has no meaning in French or English and is highly distinctive.

The disputed domain name reproduces identically the Complainant's trademark E LECLERC. Prior panels have recognized that confusing similarity is established for purposes of the Policy where the disputed domain name incorporates the complainant's trademark in its entirety. (*Facebook Inc. v. Global Domain Privacy Services Inc. / Evgeniy Gavonov*, WIPO Case No. [DME2019-0011](#).)

The generic Top-Level Domain ("gTLD") ".com" should not be considered as it is a compulsory element of a domain name.

It follows, so the Complainant contends, that the disputed domain name is clearly confusingly similar to the Complainant's registered trademark.

The Complainant contends further that the Respondent has no rights to nor is commonly known under any trade name corresponding to the disputed domain name and must have registered the disputed domain name to commit fraud or deception and illegally take advantage of the Complainant's reputation.

No license or authorization of any other kind has been given by the Complainant to the Respondent to use the trademark E LECLERC. E LECLERC is a well-known trademark and any such user would violate the Complainant's rights and not be legitimate.

In the circumstances, the Respondent must have been aware of the Complainant's legal rights in the disputed domain name containing the trademark E LECLERC at the time of registration.

The Complainant also contends that the Respondent could not have been using the disputed domain name for a *bona fide* purpose but had intentionally chosen the disputed domain name based on the registered trademark to generate traffic and income from Internet users.

The Complainant further alleges that the user of the disputed domain name is fraudulent as it is the reference to one of the Complainant's employees and cites its misuse of the Complainant's contact information.

Since there is no connection between the Respondent and the Complainant, the use of the disputed domain name by the Respondent cannot be a legitimate noncommercial or fair use but must obviously mislead and divert customers for its own commercial gain.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. By its failure to respond, the Respondent is in default in terms of paragraphs 5(f) and 14 of the Rules and paragraph 8(c) of the Supplemental Rules, with the result that the Panel must now deal with the matter on the Complaint.

## **6. Discussion and Findings**

### **A. Substantive Elements of the Policy**

Paragraph 15(a) of the Rules requires that:

"A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following:

(i) That the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

(ii) That the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Paragraph 4(b) of the Policy sets out four illustrative circumstances or acts which would, for the purposes of paragraph 4(a)(iii) above, be evidence of the registration of a domain name in bad faith. These are non-exclusive.

Similarly, paragraph 4(c) of the Policy sets out three illustrative circumstances which would demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii).

## **B. Effect of Default**

Notwithstanding the fact that a respondent may be in default, a complainant bears the burden of proof in respect of each of the three main elements in terms of paragraph 4(a) of the Policy. Such default does not, *per se*, entitle a complainant to a finding in its favor by reason thereof, as failure by the complainant to discharge the burden of proof will still result in the Complaint being denied (*M. Coentlin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). It follows that such default does not, of itself, constitute an acceptance or an admission of any of the averments or contentions put forward, or of the supporting evidence put up (*Standard Innovation Corporation v Shopintimates USA*, WIPO Case No. [D2011-0049](#)). The Panel is nevertheless not bound to accept all that has been put up by the Complainant but must evaluate it as it stands (*Brooke Bollea, a.k.a Brooke Hogan v. Robert McGowan*, WIPO Case No. [D2004-0383](#); and *San Lameer (Pty) Ltd and Sanlam Ltd v Atlantic Internet Services (Pty) Ltd*, WIPO Case No. [D2010-0551](#)).

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inference as it considers appropriate from the failure of a party to comply with a requirement of the Rules (*Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael*, WIPO Case No. [D2009-0942](#)).

In the present instance, the Panel finds that there are no exceptional circumstances for the failure of the Respondent to submit a Response.

From this, the Panel considers that it may accept that the Respondent does not deny the facts asserted and contentions made by the Complainant based on such facts (*Reuters Limited v Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *LCIA (London Court of International Arbitration) v. Wellsbuck Corporation*, WIPO Case No. [D2005-0084](#); *Ross-Simons, Inc. v. Domain.Contact*, WIPO Case No. [D2003-0994](#); *Standard Innovation Corporation v. Shopintimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd.*, WIPO Case No. [D2012-0040](#); and *Knorr-Bremse AG. v. WhoisGuard Protected, WhoisGuard, Inc. / Mosco Binzu*, WIPO Case No. [D2019-0616](#)).

Thus, in the view of the Panel, it may accept asserted facts that are not unreasonable, with the consequence that the Respondent will be subjected to inferences that flow naturally from the information provided by the Complainant (*Reuters Limited v Global Net 2000, Inc., Supra*; *RX America, LLC. v. Matthew Smith*, WIPO Case No. [D2005-0540](#); *Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael, Supra*; *Standard Innovation Corporation v. Shopintimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd., Supra*; *Groupe Auchan v. Anirban Mitra*, WIPO Case No. [D2012-0412](#); and *Barclays Bank PLC v. Miami Investment Brokers Inc.*, WIPO Case No. [D2012-1213](#)).

## **C. Identical or Confusingly Similar**

The Complainant put up evidence of its registered trademarks.

The fact that the word mark E LECLERC has been incorporated entirely into the disputed domain name is sufficient to establish that it is identical or confusingly similar to the Complainant's registered mark (*Quixtar*

*Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, WIPO Case No. [D2001-0784](#); *Lilly ICOS LLC v. John Hopking / Neo net Ltd.*, WIPO Case No. [D2005-0694](#); *Société Des Produits Nestlé SA v. Mustafa Yakin / Moniker Privacy Services*, WIPO Case No. [D2008-0016](#)).

The fact that the term “soc” is added to the Complainant’s trademark do not detract from the disputed domain name being confusingly similar (*Dr. Ing. h.c. F. Porsche AG v. Rojeen Rayaneh*, WIPO Case No. [D2004-0488](#)).

The use of the gTLD “.com” is not an element that generally would be taken into consideration when evaluating the identity and similarity of the Complainant’s trademark and the disputed domain name (*Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#); *Phenomedia AG v. Meta Verzeichnis Com*, WIPO Case No. [D2001-0374](#); *Qantas Airways Limited v. Minh Huynh*, WIPO Case No. [D2008-1382](#)).

In these circumstances, the Panel has no difficulty in concluding that the Complainant has established the first element in terms of paragraph 4(a)(i) of the Policy.

#### **D. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate its rights to or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with the *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, 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 customers or to target the trademark or service mark at issue.

Although paragraph 4(a)(ii) requires the Complainant to prove that the Respondent has no rights to or legitimate interests in the disputed domain name, once the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence on this factor shifts to the Respondent to rebut the showing, despite the overall burden of proof remaining upon the Complainant to prove each of the three elements of paragraph 4(a) of the Policy. (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com, Supra*).

Having defaulted, the Respondent has placed itself in a position that it has not produced any evidence to rebut such *prima facie* case as may have been established by the Complainant, and the enquiry must therefore focus upon what is evidenced by the Complainant in order to determine whether or not it has been so established.

The Complainant contends that it is the registered proprietor of the trademark E LECLERC and that the Respondent has not been given any permission to register or use any domain name incorporating the trademark of the Complainant.

Apart from there being no authorization on the part of the Complainant, there is no relationship or association between the Complainant and the Respondent, whether by license or otherwise, which also militates against the Respondent having rights or legitimate interests in or other entitlement which might fall within that

purview (*Sybase, Inc. v. Analytical Systems*, WIPO Case No. [D2004-0360](#)).

In view of the facts and circumstances put up on this ground and which are unchallenged, the Panel is of the view that the Complainant should therefore succeed on this ground as well.

The Panel is therefore satisfied that, in the circumstances, the Complainant has established the second element of the Policy.

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

Paragraph 4(b) of the Policy provides that for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(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 on-line 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 Complainant has cited a previous URDP decision which it contends confirms that the Respondent has a history of fraudulent domain name registrations (*Screwfix Direct Limited v. Raymand Nnamani*, WIPO Case No. [D2021-2758](#)).

In *Screwfix Direct Limited v. Raymand Nnamani, Supra*, the panel considered that the Respondent had registered a domain name confusingly similar to a trademark owned by the complainant in these proceedings (*Screwfix Direct Limited*); lacked any rights or legitimate interest in this disputed domain name (<[screwfixtradehouse.com](#)>); and was involved in fraudulent activity wherein it utilized two email addresses associated with the disputed domain name to impersonate the complainant’s employees and to deceive the complainant’s suppliers.

The Respondent’s past actions described in *Screwfix Direct Limited v. Raymand Nnamani, Supra*, caused that panel to find the Respondent clearly showed a fraudulent registration which underlines the Respondent’s bad faith in the present case. Indeed, he registered the disputed domain name reproducing the Complainant’s trademark and used it to create an email address to send fraudulent emails impersonating the Complainant and a member of its organization for the purpose of deception. The Respondent has previously resorted to cybersquatting and fraudulent practices which are disruptive to the business of those targeted and to the Complainant herein and are a clear indication of bad faith registration and use of the disputed domain name.

The implication arising from the disputed domain name, in the mind of a would-be customer, is therefore clearly that it is either of or in some way associated with the Complainant, which in turn, in the view of the Panel, leads to the inescapable conclusion that such potential customer is invited to do business with either the Complainant itself or someone authorized on its behalf in relation to its goods. That would, by

application of paragraph 4(b)(iv) of the Policy, constitute bad faith registration and use. (*Media24 Limited v. Llewellyn Du Randt*, WIPO Case No. [D2009-0699](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd, Supra*).

The selection of the disputed domain name that is confusingly similar to the Complainant's trademark and the Complainant's domain name, particularly in the absence of any explanation, leads to the conclusion, in the view of the Panel, that the Respondent must have known of the reputation of the Complainant in the market and therefore it selected the disputed domain name in circumstances where it was very well aware of the Complainant's reputation and intended to benefit therefrom (*Deutsche Post AG v. MailMij LLC*, WIPO Case No. [D2003-0128](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)), particularly where it is so widely known globally. Moreover, such conduct by the Respondent implies that it intended to suggest to would-be customers that it was in some way linked to or associated with the Complainant and thereby solicit business by creating that belief in the mind of consumers.

Particularly significant, in the view of the Panel, is the fact that the Complaint draws attention to the misuse of the identity of a member of the Complainant's E LECLERC Group. This, alone, in the view of the Panel, demonstrates bad faith on the part of the Respondent.

The Panel is therefore satisfied that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Panel orders that the disputed domain name <soc-eleclerc.com> be transferred to the Complainant.

*/Archibald Findlay/*

**Archibald Findlay**

Sole Panelist

Date: February 16, 2023