

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. Name
Redacted

Case No. D2023-0504

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 Name redacted¹, France.

2. The Domain Name and Registrar

The disputed domain name <leclerc-sodiroche.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2023. On February 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 3, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 6, 2023, 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 February 7, 2023.

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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 2, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on March 6, 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 Complainant is Association des Centres Distributeurs E. Leclerc, and runs a nationwide chain of supermarkets under the name Leclerc.

It owns trademark rights in the name Leclerc, such as:

- European Trademark LECLERC Registration No. 002700656 filed on May 17, 2002 and registered on February 26, 2004, and duly renewed since then;
- French trademark LECLERC Registration No. 1307790 filed and registered on May 2, 1985, and duly renewed since then.

Among the Complainant's affiliated companies is a French corporation named SODIROCHE, that exploits a supermarket in the French city of La Roche-sur-Yon.

The Complainant has been advised of the registration of the disputed domain name <leclerc-sodiroche.com> on May 25, 2022. The disputed domain name redirects to the Complainant's genuine web site.

The Complainant filed a UDRP Complaint on February 2, 2023, and obtained the disclosure of the Respondent's identity that appeared to be the name of one of Sodiroche's employees, with an address corresponding to Sodiroche's headquarters.

Two e-mail servers were set up on the disputed domain name that were used as a fraudulent email address for phishing purposes.

Furthermore a complaint was filed on December 23, 2022, with the French District Attorney for fraudulent impersonation, forgery and criminal fraud.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademarks formed with the name "LECLERC"; that the Respondent does not have any rights or legitimate interests therein; and, that the Respondent registered and uses the disputed domain name in bad faith, being emphasized that the Respondent declared a name that is identical to one of its affiliated company's employees and also uses the domain name as an email address to impersonate this employee for phishing purposes.

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 lack of formal response, 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 trademark registrations for LECLERC.

The disputed domain name reproduces the Complainant's trademark LECLERC.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) 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](#)").

It is worth emphasizing that the name SODIROCHE corresponds to the corporate name of a company that is affiliated with the Complainant, and that exploits a LECLERC supermarket. The addition of SODIROCHE to the Complainant's trademark LECLERC does not prevent a finding of confusing similarity.

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Consequently, the disputed domain name is confusingly similar to the Complainant's trademark and 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 the Respondent defence 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 any 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* case 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 does not make any *bona fide* use - neither commercial nor non-commercial, of the disputed domain name, as the same is routed towards the Complainant's genuine web site. In addition, the disputed domain name is registered in the name of an employee of a company that is affiliated to the Complainant, and is used in connection with a fraudulent email scheme. UDRP panels have categorically held that use of a domain name for illegal activity can never confer rights or legitimate interests.

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

It transpires from the Complainant's assertions and the evidence filed in support thereof that:

The Complainant has substantiated the fact that its trademark LECLERC, which has been registered and used in France and internationally for years, now benefits from a high level of public awareness, as acknowledged in a number of earlier UDRP decisions. It therefore appears very unlikely that the Respondent could be unaware of the Complainant's rights when it registered the disputed domain name.

The Respondent has registered a domain name formed with the Trademark of the Respondent (LECLERC) and the Corporate Name of a company affiliated to the Complainant (SODIROCHE), which can hardly be regarded as a coincidence.

The Respondent, who initially concealed its identity at the time of registration using a Privacy Service, was later disclosed as being named after the name of an employee of SODIROCHE. The address that the Respondent declared in the Whois Register is the one of SODIROCHE. The Complainant has confirmed that the Respondent is not who he pretends to be.

The disputed domain name is routed to the genuine web site of the Complainant.

For this Panel, the above is a clear indication that the Respondent necessarily had the Complainant's trademark in mind when it registered the disputed domain name.

The information provided to the Panel in support of the Complainant's contentions also shows that the Respondent is making use of the disputed domain name as a fraudulent email address, and placed orders with some of the Complainant's suppliers and clients, impersonating an employee of SODIROCHE, affiliated with the Complainant, with a view to extorting funds from the Complainant's business partners and customers.

This is a fraudulent impersonation of the Complainant clearly demonstrates a use in bad faith of the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(iii) 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 <leclerc-sodiroche.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: March 8, 2023