

## ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - ACD Lec v. Name  
Redacted  
Case No. D2023-1493

### 1. The Parties

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

The Respondent is Name Redacted<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <leclercs-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 April 5, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 April 11, 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 April 14, 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”).

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<sup>1</sup> 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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 April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 10, 2023.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on May 24, 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 a French association, ACD Lec (Association des Centres Distributeurs E. Leclerc). "Leclerc" refers to the last name of the founder and promoter of the Complainant: Mr. Leclerc.

The Complainant owns trademark registrations for the brand LECLERC, such as the European Union trademark registration no. 002700656, registered on February 26, 2004, and the French trademark registration no. 1307790, registered on May 2, 1985.

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 Respondent registered the disputed domain name on February 9, 2023.

The Panel accessed the disputed domain name on June 3, 2023, when it was not linked to any active website<sup>2</sup>. The Complainant brought evidence that the disputed domain name was recently pointing to a parking page containing hyperlinks referring to the Complainant's field of activity (*i.e.* supermarket and groceries retailing sectors) and resolving to the Complainant's direct competitors' websites.

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

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

The Complainant makes the following contentions:

- The disputed domain name is confusingly similar to the Complainant's trademark. The minimal variance between the disputed domain name and the Complainant's trademark does not prevent the confusing similarity between these signs. Indeed, the addition of the letter "s" in the disputed domain name can be seen as a typing error and is likely to constitute intentional typosquatting. Furthermore, the letter "s" will most probably not be pronounced, so that the disputed domain name and the Complainant's trademark LECLERC have identical sound. The denomination "leclerc" has no meaning in French or English and is highly distinctive. The association of the well-known trademark LECLERC with the name "Sodiroche" increases the likelihood of confusion as it directly refers to the French company SODIROCHE, incorporated in 1976 and which belongs to the Complainant's organization. Indeed, the company SODIROCHE runs a LECLERC supermarket located in La Roche-sur-Yon, France. Finally, the Top-Level Domain ".com" should not be taken into account as it is a compulsory element of a domain name.

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<sup>2</sup> Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8, "[n]oting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision...This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name...".

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized, licensed, or permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating the Complainant's trademark. Moreover, there is no business relationship between the Complainant and the Respondent. The disputed domain name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate noncommercial fair use. Indeed, the disputed domain name points to a parking page with hyperlinks referring to the Complainant's field of activity and resolving to the websites of the Complainant's direct competitors' websites. The Respondent registered the disputed domain name under anonymity which is commonly considered as a lack of rights or legitimate interests by previous panels. The Respondent registered the disputed domain name by misusing the identity of the Chairman of a company belonging to the Complainant's organization.
  
- The disputed domain name was registered and is being used in bad faith. It is unlikely that the Respondent was unaware of the Complainant's activities and of the existence and use of the LECLERC trademarks at the time the registration was made. The Complainant's LECLERC hypermarket network is well-known in France and in several other European countries. The Respondent's concealment of its identity is also indicative of bad faith. There is no legitimate or fair use of the disputed domain name. As indicated above, the disputed domain name points to a parking page with hyperlinks referring to the Complainant's field of activity and resolving to the websites of the Complainant's direct competitors' websites. Furthermore, the Respondent may be engaging in a phishing scheme aiming to send fraudulent emails to the Internet users by misusing the Complainant's identity. The disputed domain name disrupts the Complainant's business and cause harm to the Complainant's brand image. Internet users and especially the Complainant's customers may wrongly believe that the website to which the disputed domain name resolves is the Complainant's site or that the Complainant's website is not correctly functioning or has been hacked. The Complainant attempted to enter in contact with the Respondent in order to find an amicable settlement in this matter, without success.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the 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.

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

The Panel has no doubt that "Leclerc" is a term directly connected with the Complainant's trademark.

Annex 4 to the Complaint shows trademark registrations for LECLERC as early as 1985.

The disputed domain name incorporates the Complainant's trademark LECLERC, with the addition of the letter "s", of an hyphen ("-") and of the term "sodiroche", as well as of the top level domain name ".com".

The Panel believes that such additions are not enough to prevent a finding of confusing similarity, especially

considering that “Sodiroche” corresponds to the corporate name of a company that is affiliated with the Complainant. Also, the misspelling of a trademark is a practice commonly called “typosquatting”, a kind of cybersquatting in which a respondent registers a domain name in order to take advantage of typing errors eventually made by Internet users seeking a complainant’s website (see *CPP, Inc. v. Virtual Sky*, WIPO Case No. [D2006-0201](#)). Finally, it is already well established that the addition of symbols such as a hyphen or of a generic TLD extension such as “.com” are typically irrelevant when determining whether a domain name is confusingly similar to a complainant’s trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, and that the Complainant has satisfied the first element of the Policy.

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

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; or
- (iii) the respondent is 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 at issue.

Based on the Respondent’s default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel notes that the present record provides no evidence to demonstrate the Respondent’s intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name is currently not linked to any active website and previously resolved to a pay-per-click scheme targeting the same market segment as the Complainant. There are also indications that the disputed domain name may have been used for phishing activities.

The Complainant has not licensed or authorized the use of its trademark to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name. Actually, the Respondent has not indicated any reason to justify why it has chosen the specific term “leclercs-sodiroche” to compose the disputed domain name, including the famous French supermarket brand LECLERC.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or 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 the complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent (in 2023), the trademark LECLERC was already famous in France for decades and directly connected to the Complainant's retail services. The disputed domain name also includes the corporate name of a company that is affiliated with the Complainant ("Sodiroche"), and that exploits a LECLERC supermarket.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent – at the time of the registration of the disputed domain name – could not have been aware of the Complainant's trademark, as well as that the adoption of the expression "leclercs-sodiroche" could be a mere coincidence.

According to the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Actually, the Panel considers that in the present case the addition to the Complainant's trademark of descriptive term "sodiroche" may even enhance the risk of confusion, suggesting that the disputed domain name refers to the Complainant store in La Roche-sur-Yon, France.

From the Panel's search, the disputed domain name does not currently resolve to any active website.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The non-collaborative posture of the Respondent, *i.e.*, (a) not presently using the disputed domain name, (b) not indicating any intention to use it, and (c) not at least providing justifications for the use of a famous third party trademark, certainly cannot be used in benefit of the Respondent in this Panel's opinion, which circumstances, together with (d) the lack of any plausible interpretation for the adoption of the term "leclercs-sodiroche" by the Respondent, (e) the evidence provided by the Complainant's demonstration of previous uses of the disputed domain name for a pay-per-click scheme targeting the same market segment as the Complainant, and (f) the subsequent change in use of the disputed domain name, are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied 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 <leclercs-sodiroche.com> be transferred to the Complainant.

*/Rodrigo Azevedo/*

**Rodrigo Azevedo**

Sole Panelist

Date: June 10, 2023