

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Foisy Alain
Case No. D2023-1500

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 Foisy Alain, France.

2. The Domain Name and Registrar

The disputed domain name <orlydistribution-centreleclerc.com> (the “Domain Name”) 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 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 11, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on May 10, 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 large supermarket chain headquartered in France.

The Complainant is the owner of several trade marks for LECLERC, including the following:

- European Union Trade Mark LECLERC No. 002700656, registered on February 26, 2004.

“Orly Distribution” is a French company registered in 1991, owned by the Complainant and operating a supermarket in Orly, France.

The Domain Name was registered on February 10, 2023. The Domain Name points to the Complainant's website at “www.e.leclerc”.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the LECLERC trade mark in which the Complainant has rights. The Complainant highlights that the Domain Name incorporates the entire LECLERC trade mark and that the addition of (i) the name “orlydistribution” which corresponds to the name of a company owned by the Complainant and (ii) the term “centre” does not lessen the likelihood of confusion between the Domain Name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant states that the Respondent is not commonly known by the Domain Name. The Complainant contends that it has not authorized or licensed the Respondent to use any of its trade marks or to apply for or use any Domain Name incorporating the Complainant's trade mark. The Complainant also points to the use of the Domain Name to redirect to the Complainant's official website “www.e.leclerc”, with no authorization from the Complainant to conclude that this cannot be considered as use in connection with a *bona fide* offering of goods or/and services or a legitimate noncommercial fair use.

The Complainant contends that the Respondent has registered the Domain Name with full knowledge of the Complainant's trade mark and the Respondent could not have ignored the reputation of the Complainant's trade mark LECLERC as it is well-known. The Complainant also contends that this is further evidenced by the fact that the Domain Name also includes (i) the name “orlydistribution” which corresponds to a company owned by the Complainant and one of the Complainant's supermarkets (ii) and the descriptive term “centre” which usually designates the Complainant's LECLERC supermarkets as a synonym of “store” in English. The Complainant alleges that the Respondent is using the Domain Name in bad faith. The Complainant points to the use of the Domain Name to redirect to the Complainant's official website “www.e.leclerc”, with no authorization from the Complainant to conclude that this is an attempt on the part of the Respondent to misleadingly suggest an affiliation with the Complainant. The Complainant also points to the fact that MX servers have been set up for the Domain Name and that there is a risk that the Domain Name could be used to facilitate fraudulent activities such as phishing. The Complainant adds that this could disrupt the Complainant's business and cause harm to the Complainant's image. Finally, the Complainant confirms that it has sent a cease and desist letter to the Respondent but that it never received a response.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to decide on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in LECLERC, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark LECLERC in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's LECLERC trade mark in its entirety with the addition of the name "orlydistribution" and the term "centre". These additions do not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name, as the Complainant's trade mark remains recognizable within the Domain Name.

Then there is the addition of the generic Top Level Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to the trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] 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) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it does not know the Respondent and that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark LECLERC. There is no indication that the Respondent is commonly known by the Domain Name.

The current use of the Domain Name to redirect to the Complainant's official website "www.e.leclerc", with no authorization can only serve to increase confusion that the Domain Name is somehow affiliated with or authorized by the Complainant and is therefore misleading and cannot be considered *bona fide*, legitimate or fair.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety in combination with additional terms relevant to the Complainant, carries a risk of implied affiliation. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark 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 [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact LECLERC trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the renown of the Complainant's LECLERC trade mark, as substantiated by the Complainant and acknowledged by several previous UDRP panels, (ii) the fact that the Respondent appears to be based in France where the Complainant is headquartered and where its renown is higher than anywhere else, (iii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade mark LECLERC and (iv) the targeted choice of terms added to the LECLERC trade mark, the name "orlydistribution" which corresponds to a company owned by the Complainant and one of the Complainant's supermarkets and the descriptive term "centre" which would be the equivalent of "store" in English.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint, the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The use of the Domain Name to redirect to the Complainant's official website "www.e.leclerc", with no authorization can only serve to increase confusion that the Domain Name is somehow affiliated with or authorized by the Complainant (See *PayPal Inc. v. Jon Shanks*, WIPO Case No. [D2014-0888](#) and *AXA S.A., AXA Investment Managers S.A. v. Domains By Proxy, Inc. / Adam Long*, WIPO Case No. [D2009-0452](#)).

This circumstance, along with the DNS setup of the Domain Name (with active MX records) and the composition of the Domain Name, lead the Panel to consider that the Domain Name could be used to deceive Internet users. In these circumstances, the Domain Name constitutes a potential threat hanging over the head of the Complainant especially in light of the fact that fraudulent use of domain names and emails is particularly prevalent in relation to online shopping.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

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 Domain Name, <orlydistribution-centreleclerc.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: May 24, 2023