

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v.  
libei yang, libei yang  
Case No. D2023-2983

### **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 libei yang, libei yang, China.

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

The disputed domain name <e-leclerc-boisdarcy.com> is registered with OwnRegistrar, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 12, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 17, 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 July 18, 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 July 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 11, 2023.

The Center appointed Delia-Mihaela Belciu as the sole panelist in this matter on August 15, 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, incorporating in its name the denomination “LECLERC” which refers to the last name of the founder and promoter of the association – Edouard Leclerc.

According to the evidences available in this file, there are 721 E LECLERC stores in France and around 100 in the other European countries where the Complainant runs its business. The Complainant is the leader of the large-scale distribution in France. In 2019, the turnover of the Complainant was EUR 48.20 billion in France. The Complainant employs approximately 133,000 people.

The Complainant owns several E LECLERC trademarks, including:

- the European Union word trademark for E LECLERC No. 002700664, registered on January 31, 2005, for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45; and
- the European Union figurative trademark for E LECLERC No. 011440807, registered on May 27, 2013, for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

The disputed domain name was registered by the Respondent on April 24, 2023, and resolved to a website that displayed pornographic content at the time when the Complaint was filed.

On June 1, 2023, the Complainant sent to the Respondent through the privacy service provider of the disputed domain name a cease-and-desist letter demanding the Respondent, among others, to immediately deactivate the website associated to the disputed domain name and to deactivate the disputed domain name, (the “Letter”). The Respondent did not respond to the Letter, despite several reminders.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is identical to the Complainant’s E LECLERC mark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

In order for the Complainant to succeed, such must prove, according to paragraph 4(a) of the Policy, that:

- (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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In case all three element above have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. Thus, the Panel will deal with each of the requirements in turn.

### A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, the Complainant has to show that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to the requirement of having rights pursuant to paragraph 4(a)(i) of the Policy, the Complainant owns E LECLERC registered trademarks. Consequently, the Panel finds that this requirement is fulfilled.

With regard to the assessment of identity or confusing similarity of the disputed domain name with the E LECLERC trademarks, it is generally accepted that this involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Panel finds that the disputed domain name is confusingly similar to the E LECLERC trademarks as the disputed domain name incorporates the E LECLERC mark in its entirety, and the addition of the term "boisdarcy" which seems to correspond to the name of the French city, Bois d'Arcy, where the Complainant has an E LECLERC store and where it offers its services, does not prevent a finding of confusing similarity. The E LECLERC mark remains clearly recognizable within the disputed domain name.

Previous UDRP panels have held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8, *Inter-IKEA Systems B. V. v. Evezon Co. Ltd.*, WIPO Case No. [D2000-0437](#); *The British Broadcasting Corporation v. Jaime Renteria*, WIPO Case No. [D2000-0050](#); and *Volvo Trademark Holding AB v. SC-RAD Inc.*, WIPO Case No. [D2003-0601](#)).

In what concerns the addition of the generic Top-Level Domain ("gTLD") ".com", this is not to be taken into consideration when examining the confusing similarity between the Complainant's trademarks and the disputed domain name, as such is viewed as a standard registration requirement and such is disregarded under the first element confusing similarity test (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see section 2.1 of the [WIPO Overview 3.0](#)).

In this case, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent, as the Respondent has not submitted any response.

Thus, based on the available evidence, the Respondent does not appear to be known by “E LECLERC” nor does it own any trademarks incorporating the term “E Leclerc”. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its E LECLERC trademarks in the disputed domain name.

Moreover, based on the evidence filed by the Complainant, the disputed domain name resolved to a website that displayed pornographic content at the time when the Complaint was filed.

Furthermore, the disputed domain name comprises the Complainant’s E LECLERC mark in its entirety in combination with the term “boisdarcy”, which seems to correspond to the name of the French city, Bois d’Arcy, where the Complainant has a E LECLERC store and where it offers its services, leading to confusion for Internet users as to the disputed domain name’s affiliation with the Complainant.

The above does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith.

In this case, the Complainant’s rights to the E LECLERC trademark predate the registration date of the disputed domain name.

The E LECLERC trademark is registered and has effects in several jurisdictions and enjoys of a well-known character, at least in France, recognized by earlier UDRP panels as well (see *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 - A.C.D. Lec. v. Privacy Service Provided by Withheld for Privacy ehf/ Name Redacted and Chantal Humbert*, WIPO Case No. [D2021-3902](#)).

In light of the well-known character of the E LECLERC trademark, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the disputed domain name without knowledge of the Complainant’s E LECLERC mark, which support a finding of bad faith registration.

The Respondent’s incorporation into the disputed domain name of the Complainant’s E LECLERC mark in its entirety, followed by the term “boisdarcy”, which seems to correspond to the name of the French city, Bois d’Arcy, where the Complainant has a E LECLERC store and where it offers its services, lead to a finding that such was made intentionally in order for such to make use of the commercial value and goodwill of the Complainant’s E LECLERC mark to attract and direct Internet users to the Respondent’s own business

offerings, namely pornographic content, aspects which support a finding of bad faith use. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)). Moreover, the Panel finds resolving the disputed domain name to a pornographic website is use in bad faith in accordance with paragraph 4(b)(iv) of the Policy.

Finally, the fact that the disputed domain name was registered with a privacy service and the Respondent provided false or incomplete contact details (the Written Notice was not delivered to the Respondent), which leads to the assumption that it was made in order to hide the Respondent's identity and also to prevent the Complainant from contacting him, aspect which further supports a finding of bad faith (see [WIPO Overview 3.0](#), section 3.6).

For all these reasons, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

## **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-boisdarcy.com> be transferred to the Complainant.

*/Delia-Mihaela Belciu/*

**Delia-Mihaela Belciu**

Sole Panelist

Date: August 29, 2023