

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v.
Jackie Frawley and Laura Isla
Case No. D2023-4564

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec, France, represented by MIIP MADE IN IP, France.

The Respondents are Jackie Frawley and Laura Isla, both located in France (referred to collectively as the “Respondent”).

2. The Domain Names and Registrar

The disputed domain names <e-leclerc-lavaldis.com> and <e-leclerc-lavaldis.net> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2023. On November 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) and GDPR Masked) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 10, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on November 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 8, 2023.

The Center appointed Jane Seager as the sole panelist in this matter on December 21, 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

Founded in 1948, the Complainant, Association des Centres Distributeurs E. Leclerc - A.C.D. Lec, is a French association, headquartered in France. The Complainant operates a chain of supermarkets and hypermarkets, with some 735 locations in France, as well as approximately 100 locations in other European countries, including Poland, Portugal, Slovenia, and Spain. The Complainant employs approximately 140,000 people and reported an annual turnover of EUR 55.6 billion in 2022.

For use in connection with the Complainant's retail operations, the Complainant owns a number of trademarks, including:

- European Union Trade Mark No. 002700664, E LECLERC, registered on January 31, 2005; and
- European Union Trade Mark No. 011440807, E.LECLERC (figurative), registered on May 27, 2013.

The disputed domain name <e-leclerc-lavaldis.com> was registered on September 14, 2023.

The disputed domain name <e-leclerc-lavaldis.net> was registered on October 5, 2023.

In early October 2023, the disputed domain names both resolved to websites with identical layouts and contents (the "Respondent's websites") purporting to be those of "Laval Distribution", a company forming part of the Complainant's group of companies that acts as a distributor for the Complainant and operates an E Leclerc store located in Laval-sur-Vologne, France. The Respondent's websites made direct reference to the Complainant, displaying the Complainant's E LECLERC trademark. The Respondent's websites also listed the physical address for Laval Distribution on their contact pages but listed a phone number and email address not belonging to the Complainant.

Further to requests submitted by the Complainant to the Registrar and the hosting provider, the disputed domain names no longer resolve to active websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

The Complainant asserts rights in the trademark E LECLERC. The Complainant submits that the disputed domain names are confusingly similar to the Complainant's trademark. The Complainant asserts that the element "lavaldis" refers to an abbreviation of "Laval Distribution", and that its inclusion in the disputed domain names does not prevent a finding of confusing similarity with the Complainant's E LECLERC trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant asserts that no authorization has been granted to the Respondent for it to make use of the Complainant's trademark. The Complainant submits that the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services, but rather that the disputed domain names have been used in an attempt to impersonate the Complainant's distributor, Laval Distribution. The Complainant further argues that the Respondent is not commonly known by the disputed domain names, and that the disputed domain names appear to have been registered using false underlying registrant information.

The Complainant submits that the disputed domain names were registered and are being used in bad faith. The Complainant claims to have acquired substantial reputation in connection with its retail activities in France and elsewhere in Europe. The Complainant infers from the Respondent's use of the disputed domain names to impersonate its distributor, Laval Distribution, that the Respondent was aware of the Complainant and its rights in the E LECLERC trademark when registering the disputed domain names and submits that such use amounts to use in bad faith. The Complainant further submits that the Respondent's provision of false registrant information amounts to further evidence of bad faith.

The Complainant requests transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that (i) the disputed domain names previously resolved to identical websites, both of which purported to be that of the Complainant's distributor, Laval Distribution; (ii) the disputed domain names were both registered with the same Registrar; (iii) the composition of the disputed domain names is essentially identical, consisting of the second level "e-leclerc-lavaldis" under the generic Top-Level Domains ".com" and ".net"; and (iv) the disputed domain names were registered less than three weeks apart.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to throughout as the "Respondent") in a single proceeding.

6.2. Substantive Matters

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "lavaldis", may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

As noted above, the disputed domain names appear to have been used in an attempt to impersonate one of the Complainant's distributors, Laval Distribution. Panels have held that the use of a domain name for illegal activity such as impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

It is clear from the contents of the Respondent's websites that the Respondent was aware of the Complainant and its rights in the E LECLERC trademark when registering the disputed domain names and did so in a bad faith attempt to create a misleading impression that the disputed domain names and corresponding websites were operated or endorsed by the Complainant or the Complainant's distributor, Laval Distribution.

Prior UDRP panels have held that the use of a domain name for illegal activity, in this case attempted impersonation of one of the Complainant's distributors, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitute bad faith under the Policy.

The fact that the disputed domain names no longer resolve to active websites does not affect the Panel's findings of bad faith. [WIPO Overview 3.0](#), section 3.3.

The Panel further finds that the Respondent's provision of what appears to be false registrant information amounts to further evidence of the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established 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 names <e-leclerc-lavaldis.com> and <e-leclerc-lavaldis.net> be transferred to the Complainant.

/Jane Seager/

Jane Seager

Sole Panelist

Date: January 4, 2024