

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. s0qunzg2
Case No. D2023-4948

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 Respondent is s0qunzg2, China.

2. The Domain Name and Registrar

The disputed domain name <eleclercmall.net> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 28, 2023. On November 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 December 1, 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 December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2024.

The Center appointed Áron László as the sole panelist in this matter on January 18, 2024. 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 the Association des Centres Distributeurs E. Leclerc – A.C.D. Lec, which was set up in France in the 1940s and operates supermarkets and hypermarkets in France and other European countries. The Complainant has approximately 700 stores in France and almost 100 stores outside France.

The Complainant is the owner of the following trademarks in the European Union:

- European Union trademark “E LECLERC” (word) No. 002700664 filed on May 17, 2002 and registered on January 31, 2005 for goods and services in Nice classes 1 to 45;
- European Union trademark “E.LECLERC” (figurative) No. 011440807 filed on December 5, 2012 and registered on May 27, 2013 for goods and services in Nice classes 1 to 45.

The Complainant uses *inter alia* the domain names <e.leclerc> and <mouvement.leclerc>.

The Complainant has attempted to contact the Respondent through its registrar and hosting provider, but has received no response.

The disputed domain name was registered on September 25, 2023.

On October 12, 2023, the website under the disputed domain name displayed an image of an E. Leclerc shop, some icons reproducing the figurative trademark “E. LECLERC”, some partially neutralised email addresses and a text written in English suggesting that the Complainant’s shares could be purchased on the website for a consideration of USD 75 to USD 59,998. The text read (verbatim) “reholder and earn 78 USDT every dayDeposit 1738USDT to become an E-04 shareholder and earn 2 [rest illegible]”.

Subsequently, the content on the disputed domain name website became unavailable. To date, no content is available on the disputed domain name website.

The identity of the Respondent was originally masked. The Respondent’s name, as provided by the Registrar, contains seemingly random letters and numbers, and the contact details are also peculiar.

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 name.

In particular, the Complainant claims that its trademarks are well known in France and beyond. The Complainant’s business has been in continuous operation since the 1940s and it holds a leading position in the French market.

The disputed domain name reproduces the word mark in its entirety, the only additional element “mall” being descriptive of the Complainant’s services. The choice of the disputed domain name cannot be a mere coincidence, the trademark in itself has no meaning other than the name of the Complainant’s founder. The Respondent could not have been unaware of the Complainant and its trademarks. The Complainant alleges that the Respondent has not used the disputed domain name in good faith, that the Respondent’s name bears no resemblance to the disputed domain name, and that the Respondent has only used the disputed

domain name fraudulently before its content disappeared. The Respondent has registered the disputed domain name in an anonymous manner, which also indicates a lack of rights and legitimate interests. The identity of the Respondent is false.

The current non-use of the disputed domain name harms the Complainant's interests, disrupts its business, and damages its brand image. The Complainant's customers may mistakenly believe that the website to which they are redirected is the Complainant's website or that the Complainant's website is not functioning properly or has been hacked.

B. Respondent

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

6. Discussion and Findings

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 entirety of the word mark is reproduced within the disputed domain name. 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 the term "mall" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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 name. 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 name such as those enumerated in the Policy or otherwise.

The only use actually made by the Respondent, namely offering the Complainant's share for sale for contributions ranging from USD 75 to USD 599,998, is obviously fraudulent. The Respondent has made no representations about any other use.

Panels have held that the use of a domain name for illegal activity, i.e. fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Neither does the subsequent non-use of the disputed domain name confer rights or legitimate interests on the Respondent.

Furthermore, the Panel notes that the Respondent's name as provided by the Registrar, which contains seemingly random letters and numbers, bears no resemblance to the disputed domain name and therefore the Respondent does not appear to be commonly known by that domain name.

The Complainant's trademark has no meaning, it is a unique family name. The Panel finds it is far from conceivable that the Respondent would have chosen the domain name by mere chance.

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.

In the present case, the Panel notes that, first, the Complainant has demonstrated that the trademarks have been in use for a long period of time and are well-known, at least in France. The trademarks are unique and have no meaning other than the name of the Complainant's founder, so that the Respondent's choice of the disputed domain name cannot be a mere coincidence. Therefore, the Panel finds that the Respondent was well aware of the trademarks when it chose the disputed domain name.

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.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The former use of the disputed domain name leads the Panel to believe that the disputed domain name was being used for fraudulent activities. In particular, the disputed domain name was used to trick people into paying money to the website operator, who falsely claimed to be selling the Complainant's shares.

Panels have held that the use of a domain name for illegal activity, e.g. fraud, 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 name constitutes bad faith under the Policy.

Therefore, the disputed domain name intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark, which qualifies as bad faith under paragraph 4(b)(iv) of the Policy.

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 name <eleclercmall.net> be transferred to the Complainant.

/Áron László/

Áron László

Sole Panelist

Date: January 29, 2024