

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. John Peter Case No. D2024-1764

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 John Peter, Canada.

2. The Domain Name and Registrar

The disputed domain name <eleclercoutlets.shop> 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 26, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 3, 2024, 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 May 6, 2024.

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 May 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 3, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on June 17, 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 a chain of supermarkets and hypermarkets in France. The Complainant operates approximately 735 stores in France and several other European countries. As of July 2023, with over 23% of the grocery market share, the Complainant stands as one of the leaders in large-scale distribution in France. In 2022, the Complainant reported a turnover of 55.6 billion euros in France and employs around 140,000 people.

The Complainant has evidenced to be the registered owner of numerous trademark registrations, containing the term E LECLERC, including, but not limited, to the following:

- the European Union trademark registration No. 002700664, registered on January 31, 2005, for the word mark E LECLERC, in classes 1 to 45;
- the European Union trademark registration No. 011440807, registered on May 27, 2013, for the figurative mark E.LECLERC, in classes 1 to 45.

The Complainant's trademarks were registered before the disputed domain name, which was registered on January 2, 2024. The disputed domain name currently displays an inactive webpage. However, based on the evidence provided by the Complainant, the disputed domain name previously redirected to what appeared to be an e-commerce website that impersonated the Complainant by displaying the Complainant's trademark with a photo of the Complainant's store, and purportedly offered for sale products.

The Respondent, according to the disclosed WhoIs information for the disputed domain name, is located in Canada.

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.

Notably, the Complainant emphasizes that the Complainant's reputation is globally recognized, and established over numerous years not only in France, but also in several other European countries where the Complainant conducts business.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademarks E LECLERC as it incorporates the entire trademark. The addition of the generic term "outlets" to the E LECLERC trademark does not prevent the confusing similarity between the disputed domain name and the Complainant's trademark. On the contrary, this association increases the risk of confusion because the term "outlets" refers to a point of sale. As a result, Internet users might mistakenly believe that the disputed domain name will lead them to the Complainant's website, where they can find its goods and services online or information about its stores. With regards to the generic Top-Level Domain ("gTLD"), "shop" in this case, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (1) the Complainant has never licensed, or otherwise permitted the Respondent to apply to register the disputed domain name; (2) the Respondent is not commonly known by the disputed domain name; (3) the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor making legitimate noncommercial or fair use of the disputed domain name, but solely to impersonate the Complainant.

Finally, the Complainant argues that the Respondent has registered and used the disputed domain name in bad faith for the following reasons: 1) the Complainant's trademark significantly predates the registration of the disputed domain name, and the Complainant's E LECLERC trademark is well known and widely used in France and in several other European countries where the Complainant runs its business. This indicates that the Respondent was aware of the Complainant's trademark; 2) the Respondent's use of the disputed domain name in connection with an e-commerce website that reproduced the Complainant's E LECLERC trademark and logo shows that at the time of the registration of the disputed domain name the Respondent clearly knew and targeted the Complainant's trademark in order to impersonate the Complainant and generate traffic to the disputed domain name.

Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

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 Panel finds the mark is recognizable 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 other terms, here, "outlets", 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

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 name.

Indeed, the Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the E LECLERC trademarks or to seek registration of any domain name incorporating the trademarks. The Respondent is also not known to be associated with the E LECLERC trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

Currently, the disputed domain name merely resolves to an inactive page. Previously, as demonstrated by the Complainant on record, the disputed domain name redirected to a webpage that impersonated the Complainant by mentioning the trademarks, logo, and history of the Complainant, and presented itself as an “online space dedicated to exceptional offers” (translated from the original text in French). Therefore, the disputed domain name has not been used for a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.2.

Based on the available record, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. [WIPO Overview 3.0](#), section 2.4.

Finally, the Panel also notes that the composition of the disputed domain name, carries a risk of implied affiliation or suggests sponsorship and/or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has provided evidence supporting its prima facie claim that Respondent lacks any 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.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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 the Complainant's E LECLERC trademarks substantially predate the Respondent's registration of the disputed domain name. The Complainant has established a solid reputation, particularly in France, where it maintains a widespread network of physical stores. Furthermore, the inclusion of the term "outlets" in the disputed domain name and the use of the Complainant's trademarks and logo on the website at the disputed domain name indicate that the Respondent clearly knew about the Complainant's business and the trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Further, the disputed domain name previously resolved to webpage impersonating the Complainant and purportedly promoting products and services. In the Panel's view, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Upon reviewing the available evidence, the Panel concludes that the current non-use of the disputed domain name does not preclude a finding of bad faith, as established in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

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 name <eleclercoutlets.shop> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: June 30, 2024