

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Hassan Salmi

Case No. D2024-2549

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 Hassan Salmi, Morocco.

2. The Domain Name and Registrar

The disputed domain name <eleclerci.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 June 21, 2024. On June 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 24, 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 June 25, 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 June 26, 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 June 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2024.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on July 25, 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 French association operating a chain of supermarkets and hypermarkets under the E. LECLERC mark. E. LECLERC, derives from the name of the founder and promoter of the association, Mr. Edouard Leclerc. The Complainant employs 140,000 people, has 734 stores in France, the first of which opened in 1949, and approximately 100 among Poland, Spain, Portugal and Slovenia. In 2022 the Complainant's turnover amounted to EUR 55.6 billion in France. With more than 23% of the grocery market share in July 2023, the Complainant is the leader of the large-scale distribution in France.

The Complainant is the owner of the following trademarks:

- E LECLERC (word mark), European Union Trademark Registration No. 002700664, filed on May 17, 2002 and registered on January 31, 2005, covering goods and services from Class 1 to Class 45;

- E LECLERC (figurative mark), European Union Trademark Registration No. 011440807, filed on December 5, 2012 and registered on May 27, 2013, covering goods and services from Class 1 to Class 45.

The disputed domain name was registered on April 5, 2024 by an individual allegedly located in Morocco, and resolves to a page displaying the following statement: "Sorry, this store is currently unavailable". The Respondent set up Mail exchanges "MX records" for the disputed domain name. On May 16, 2024, the Complainant sent a letter to the Registrar and the hosting provider of the disputed domain name seeking the deactivation of the disputed domain name and tried to contact the Respondent via the Registrar to obtain the transfer of the disputed domain name. As the Complainant's attempts proved ineffective, the Complainant sent two reminders, on May 23, and May 30, 2024, to which the Complainant did not receive a reply.

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 contends that the disputed domain name is confusingly similar to its E LECLERC mark since it reproduces this mark identically, followed by the last letter "i". This minimal variance does not prevent a confusing similarity of the disputed domain name with the Complainant's mark. It is a typing error and constitutes an intentional "typosquatting".

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the disputed domain name, and does not own rights, including trademark rights, on the name "E Leclerc". Moreover, the Complainant has not authorized, licensed or permitted the Respondent to use any of its trademarks or to apply for, or use, a domain name incorporating the E LECLERC mark. The Respondent has no business relationship or other link of any nature with the Complainant.

According to the Complainant, the disputed domain name is not used in connection with a bona fide offering of goods or services, or a legitimate noncommercial fair use. In fact, the disputed domain name resolves to a webpage indicating that the online store is not available, and the Respondent set up MX records on the disputed domain name.

Lastly, the Complainant maintains that the disputed domain name was registered and is being used in bad faith. The E LECLERC mark is distinctive and well known. In view of the fact that the Complainant's mark derives from the name of its founder, E LECLERC is immediately and exclusively associated with the Complainant. The fact that the disputed domain name reproduces the Complainant's mark entirely, with the slight variation of the addition of a last letter "i", which appears to be an intentional typo, leads to the conclusion that the Respondent registered the disputed domain name being aware of the Complainant's mark and activity. Accordingly, the registration of the disputed domain name is in bad faith.

Regarding use in bad faith, the Complainant maintains that the use of the disputed domain name to resolve to a webpage reporting that the online store is currently unavailable disrupts the Complainant's business and causes harm to the Complainant's image. In light of the close resemblance of the disputed domain name with the Complainant's mark and the strong public awareness of the Complainant's trademark, any attempt to actively use the disputed domain name would inevitably lead to a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Respondent's website by the Complainant. Moreover, the Complainant's customers could wrongly believe that the website associated with the disputed domain name does not currently function or has been hacked. Thus, the Internet users would perceive the activity and image of the Complainant in a harmful way.

In the Complainant's view, further indications of bad faith lie in the fact that:

- the Respondent set up MX records for the disputed domain name, so that the Respondent could use the disputed domain name for phishing purposes by sending fraudulent emails;
- the Respondent did not reply to the Complainant's cease and desist letter and, instead, continued using the disputed domain name in breach of the Complainant's rights;
- the Respondent concealed its identity behind a privacy service to avoid being detected, thus making it more difficult for the Complainant to protect its E LECLERC mark.

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 Panel finds the mark is well recognizable within the disputed domain name. The disputed domain name incorporates the trademark E LECLERC entirely, but with a clear and obvious misspelling. This practice is commonly known as "typosquatting". A domain name, which consists of a common, obvious, or intentional misspelling of a trademark, is considered to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. and 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.

In particular, the Panel notes that the Respondent has no business or other kind of relationship with the Complainant and that the Complainant did not authorize the Respondent to make use of its E LECLERC mark within the disputed domain name. Moreover, the case file does not contain any evidence that could induce to believe that the Respondent is commonly known by the disputed domain name.

The Panel also finds that the disputed domain name is not used in connection with a bona fide offering of goods or services, or a legitimate fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark mark at issue. The disputed domain name incorporates the Complainant’s trademark entirely, followed by the letter “i”, which shows an intentional behavior of the Respondent to misspell the Complainant’s mark in order to mislead Internet users looking for the Complainant, taking advantages of possible typos when writing the domain name they are looking for. Moreover, the Respondent has registered the disputed domain name under the generic Top-Level Domain (“gTLD”) “.shop”, which is a clear and direct reference to the Complainant’s business. Accordingly, the composition of the disputed domain name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Furthermore, the disputed domain name resolves to a page powered by Shopify informing that the relevant store is currently unavailable and inviting the store owner to finish setting up its new web address by going to the domain settings, clicking on “Connect domain” and enter the disputed domain name. The webpage also contains the following invitation: “Create an Ecommerce Website and Sell Online! Ecommerce Software by Shopify”. Such use of the disputed domain name is misleading for the Internet users looking for the Complainant as they are induced to believe that a new online shop of the Complainant will be shortly opened on the Respondent’s online location.

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.

Accordingly, 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 trademark derives from the name of its founder, Mr. Edouard Leclerc and is uniquely associated with the Complainant. Moreover, this trademark enjoys substantial goodwill in the retail distribution field. The disputed domain name is almost identical to the Complainant's mark, but for the addition of a letter "i" at the end, which is a clear and intentional misspelling of the Complainant's mark. Lastly, the disputed domain name has been registered under the gTLD ".shop", which is a direct reference to the Complainant's business. All these circumstances lead to the conclusion that the Respondent has registered the disputed domain name with full knowledge of the Complainant's mark. The registration of a domain name incorporating a third party's distinctive trademark without rights or legitimate interests is a registration in bad faith.

The Panel also finds that the Respondent is being using the disputed domain name in bad faith. As mentioned above, the disputed domain name resolves to a page powered by Shopify informing that the relevant store is not available yet. Noting in particular the general powers of the Panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, the Panel has been able to ascertain through some quick online investigations that Shopify operates an all-in-one commerce platform to start, run, and grow a store. The Shopify platform offers online retailers a suite of services, including payments, marketing, shipping and customer engagement tools. Accordingly, it appears clear to the Panel that the Respondent's current use of the disputed domain name is preparatory to the opening of an online store on the Shopify platform under misleading disputed domain name. Although the online store is not yet open, by using the disputed domain name in the way described above, the Respondent is making aware the mislead consumers of its upcoming opening. Hence, the Panel finds that the Respondent is using the disputed domain name primarily to disrupt the business of a competitor, and to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's on-line location, by creating a likelihood of confusion with the Complainant's mark.

In addition, the Panel notes that the Respondent set up MX records for the disputed domain name, which enable the Respondent to communicate via email with the Complainant's potential customers through an email address reproducing misspelling of the Complainant's E LECLERC mark (adding one letter "i" at the end). Any possible use of the disputed domain name for communication purposes without the Complainant's consent would certainly be illegitimate and in bad faith.

Finally, the Respondent registered the disputed domain name through a privacy service provider. Given the circumstances of this case, the Panel considers the adoption of a privacy service as a further indication of bad faith. The Respondent has decided to conceal its identity behind a privacy shield in order to render more difficult its identification and thus prevent or at least delay the Complainant's defense.

Accordingly, 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 <eleclerci.shop> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: August 8, 2024