

## ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc A.C.D. Lec v. Name Redacted

Case No. D2024-3013

### 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 Name Redacted.<sup>1</sup>

### 2. The disputed domain name and Registrar

The disputed domain name <orlydistribution-leclerc.com> is registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2024. On July 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 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”).

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<sup>1</sup>The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 4, 2024.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on September 20, 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 large supermarket chain headquartered in France.

The Complainant is the owner of several trade marks for LECLERC, including the following:

- European Union Trade Mark No. 002700656 for LECLERC, registered on February 26, 2004; and
- French Trade Mark No. 1307790 for LECLERC, registered on May 2, 1985.

"Orly Distribution" is a French company registered in 1991, owned by the Complainant and operating a supermarket in Orly, France.

The disputed domain name was registered on May 3, 2024 and points to a pay-per-click page with commercial links.

#### **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.

The Complainant contends that the disputed domain name is confusingly similar to the LECLERC trade mark in which the Complainant has rights. The Complainant highlights that the disputed domain name incorporates the entire LECLERC trade mark and that the addition of the name "orlydistribution" which corresponds to the name of a company owned by the Complainant increases the likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that the Respondent is not commonly known by the disputed domain name. The Complainant contends that it has not authorized or licensed the Respondent to use any of its trade marks or to apply for or use any domain name incorporating the Complainant's trade mark. The Complainant also points to the use of the disputed domain name to direct to a pay-per-click page with commercial links to conclude that this cannot be considered as use in connection with a bona fide offering of goods or/and services or a legitimate noncommercial fair use.

The Complainant contends that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark and the Respondent could not have ignored the reputation of the Complainant's trade mark LECLERC as it is well-known. The Complainant also contends that this is further evidenced by the fact that the disputed domain name also includes the name "orlydistribution" which corresponds to a company owned by the Complainant and one of the Complainant's supermarkets. The Complainant alleges that the Respondent is using the disputed domain name in bad faith. The Complainant points to the use of the disputed domain name to point to a pay-per-click page with commercial links and the

use for the registration of the disputed domain name of a name and an address that correspond to one of the Complainant's supermarkets and its director. The Complainant also points to the fact that MX servers have been set up for the disputed domain name and that there is a risk that the disputed domain name could be used to facilitate fraudulent activities such as phishing.

## **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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms here, "onlydistribution", 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 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. 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 Complainant has stated that it does not know the Respondent and that it has not licensed or otherwise authorised the Respondent to make any use of its trade mark LECLERC. There is no indication that the Respondent is commonly known by the disputed domain name.

The use of the disputed domain name to direct to a pay-per-click page cannot be considered bona fide, legitimate or fair especially given the circumstances of the present case including the substantial renown of the Complainant's LECLERC trade mark in France, where the Respondent appears to be located.

Furthermore, the nature of the disputed domain name, comprising the Complainant's trade mark in its entirety in combination with additional terms intrinsically associated with the Complainant, carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

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 disputed domain name reproduces the exact LECLERC trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including: (i) the renown of the Complainant's LECLERC trade mark, as substantiated by the Complainant and acknowledged by several previous UDRP panels; (ii) the fact that the Respondent appears to be based in France, where the Complainant is headquartered and where its renown is higher than anywhere else; (iii) the fact that the disputed domain name was registered relatively recently and many years after the registration of the trade mark LECLERC; (iv) the targeted choice of the term added to the LECLERC trade mark, the name "orlydistribution" which corresponds to a company owned by the Complainant; and (v) the use by the Respondent of fake registration details corresponding to one of the Complainant's supermarkets and its director.

Thus, the Panel finds that the disputed domain name was registered in bad faith.

As for use of the disputed domain name in bad faith, given the circumstances described in the Complaint, the evidence provided by the Complainant, the Panel considers that the disputed domain name is used in bad faith.

By using the disputed domain name to point to a pay-per-click page with commercial links, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The attempt on the part of the Respondent to impersonate the Complainant by using registration details corresponding to the Complainant along with the DNS setup of the disputed domain name (with active MX records) and the composition of the disputed domain name, lead the Panel to consider that the disputed domain name could be used to deceive Internet users. In these circumstances, the disputed domain name constitutes a potential threat hanging over the head of the Complainant especially in light of the fact that fraudulent use of domain names and emails is particularly prevalent in relation to online shopping.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the disputed domain name is used in bad faith.

Thus, the Panel finds that the disputed domain name has been registered and is also being used in bad faith.

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 <orlydistribution-leclerc.com> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: October 4, 2024