

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. ant. jo,  
e-leclerc  
Case No. D2024-3048

### **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 ant. jo, e-leclerc, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <eleclercsupport.com> is registered with Squarespace Domains II LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2024. On July 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 July 29, 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 August 1, 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 August 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 26, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on August 28, 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 retailers' cooperative and hypermarket chain; it owns the following European Union Trade Mark registrations:

- E LECLERC (word), No. 2700664, registered January 31, 2005;
-  (figurativ), No. 11440807, registered May 27, 2013.

Furthermore, the Complainant provides under the domain name <e.leclerc> its main business website.

The disputed domain name was registered on May 27, 2024.

At the time of filing this Complaint the disputed domain name resolved to a website stating "eleclercsupport.com We're under construction. Please check back for an update soon.". Moreover, the Respondent has established mail exchange ("MX") records for the disputed domain name.

A cease-and-desist letter was sent by the Complainant on June 24, 2024, and two reminders on July 2, 2024, and July 8, 2024; the Respondent did not 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 E LECLERC trademark is well-known and notes that the disputed domain name entirely incorporate such trademark.

The Complainant submits, that there is no legal relationship whatsoever between the Complainant and the Respondent. The Respondent did not respond to a cease-and-desist letter and the disputed domain name is neither used in connection with a bona fide offering of goods or/and services nor constitutes a legitimate noncommercial fair use.

Further, the Complainant submits that the Respondent was aware of the Complainant's trademark when registering the disputed domain name, since the mark E LECLERC is well-known and distinctive so that the reservation of the disputed domain name cannot be a coincidence.

Furthermore, the only Respondent's information available is the organization name corresponding to the name/brand of the Complainant's stores and its trademark, namely "E Leclerc". It therefore usurps the Complainant's identity/brand and creates a false impression of legitimacy, which is not the case.

Finally, the disputed domain name incorporates in an identical way the Complainant's trademarks so that Internet users may wrongly believe that the website to which it resolves is the Complainant's site or that the Complainant's website is not correctly functioning or has been hacked.

The Respondent also set up MX servers on the disputed domain name which could be used for phishing purposes by sending fraudulent emails.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is 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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is 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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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

In the present case, the disputed domain name is confusingly similar to the distinctive E LECLERC mark in which the Complainant has rights since it incorporates the entirety of the mark E LECLERC and only adds the descriptive term "support".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms does not prevent a finding of confusing similarity under the first element of the Policy. This is the case at present. [WIPO Overview 3.0](#), section 1.8.

Finally, it has also long been held that generic Top-level Domains ("gTLDs") (in this case ".com") are generally disregarded when evaluating the confusing similarity of a disputed domain name. [WIPO Overview 3.0](#), section 1.11.1.

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.

While 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 often impossible 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. 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 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, since it has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the E LECLERC trademark in any manner.

The Respondent is not known under the disputed domain name and the disputed domain name is not being used for a bona fide offering of goods or services.

The fact, that the Respondent's contact information contains the Complainant's registered trademark does not in itself confer rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.3. On the contrary, it is the Panels conviction that the Complainant's trademark was only included in the contact details of the Respondent in order to feign a right and falsely suggest an affiliation with the Complainant.

Furthermore, the nature of the disputed domain name, incorporating the entirety of the distinctive mark E LECLERC with the descriptive term "support", cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist. [WIPO Overview 3.0](#), section 2.5.

The Respondent did not reply and hence has not rebutted the Complainant's contentions.

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

### **C. Registered and Used in Bad Faith**

As stated in many decisions rendered under the Policy, both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

The Complainant has established rights in the registered trademark E LECLERC, long before the registration of the disputed domain name. Furthermore, the trademark E LECLERC is distinctive and used on the Internet.

Because of the distinctiveness of the E LECLERC mark, it is inconceivable for this Panel that the Respondent has registered the disputed domain name without knowledge of the Complainant's rights. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

The disputed domain name is also being used in bad faith. Although there is no evidence that the disputed domain name is being actively used or resolved to a website with substantive content, Panels have found that the non-use of a domain name (including a blank or "coming soon" page, like in the present case) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

The distinctiveness of the Complainant's trademark, and the nature of the disputed domain name support the finding 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.

Furthermore, this Panel concludes that the disputed domain name is being used in bad faith, putting emphasis on the following:

- the Complainant's trademark E LECLERC is distinctive;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name is inherently misleading, and is thus suited to divert or mislead potential Internet users from the website they are trying to visit (the Complainant's site) and giving the false impression that the Respondent must be in some way related with the Complainant, which is not the case;
- the disputed domain name has active MX records, as shown in the MX records lookup, which indicates a possible use for email services;
- the Respondent did not reply to a cease-and-desist letter filed by the Complainant; and
- there is no conceivable, plausible good faith use with regard to the disputed domain name.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain name further supports the finding of 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 name <eleclercsupport.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: September 11, 2024