

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. DELMAIRE  
David

Case No. D2024-3677

### **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 DELMAIRE David, France.

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

The disputed domain name <e-leclerc-oryldistribution.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 September 11, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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, Privacy service provided by Withheld for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 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 September 12, 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 September 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 10, 2024.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on October 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, ACD Lec (ASSOCIATION DES CENTRES DISTRIBUTEURS E. LECLERC). “E LECLERC” refers to the first initial and last name of the founder and promoter of the association. “E LECLERC” is one of the most renowned chains of supermarkets and hypermarkets in France. The Complainant operates approximately 750 stores across France, covering various regions of the country. The Complainant's chain of stores and the E LECLERC trademarks are widely recognized in France and in several other European countries.

The Complainant owns several E LECLERC trademarks and notably:

- European Union trademark E LECLERC No. 002700664 dated May 17, 2002 and duly renewed;
- European Union trademark E.LECLERC No. 011440807 dated December 5, 2012, and duly renewed.

Furthermore, the Complainant is the owner of several domain names, namely:

- <leclerc.com> registered on April 26, 1996;
- <eleclerc.com> registered on March 3rd, 1998; and
- <leclercdrive.com> registered on February 1st, 2020.

The disputed domain name is <e-leclerc-orlydistribution.com> and was registered on July 10, 2024. It resolves to a placeholder page from the website provider, WEBSITE BUILDER, indicating that a website is in construction.

#### **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 argues that the disputed domain name exactly reproduces the Complainant's trademark E LECLERC, with the addition of “orlydistribution,” which heightens the likelihood of confusion as it references the company name ORLY DISTRIBUTION, an entity within the Complainant's E LECLERC network that manages an E LECLERC store in Orly, France.

The Complainant further alleges that the Respondent, who has no affiliation whatsoever with the Complainant, appears to lack any legitimate interest or rights in the registration and use of the disputed domain name <e-leclerc-orlydistribution.com>. Indeed, the Complainant alleges that the Respondent does not use the name “E LECLERC” and is not commonly known by this designation, nor does it hold any rights, including trademark rights, to the name “E LECLERC.” The Respondent has not been authorized by the Complainant to use the “E LECLERC” trademark. Additionally, there is no business relationship between the Complainant and the Respondent.

Additionally, the Complainant alleges that the disputed domain name was registered and used in bad faith, and argues that the Respondent was aware of the Complainant's activities and the existence of the E

LECLERC trademarks at the time of the domain name registration, given the extensive recognition of the Complainant's "E LECLERC" supermarket and hypermarket network in France and multiple European countries.

Finally, the Complainant argues that there is no legitimate or fair use of the domain, as it solely points to a placeholder page from a web hosting provider, with no active or substantive content. Besides, the configuration of email servers suggests a risk of potential misuse, such as phishing, through which the Respondent could send fraudulent emails.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions and is therefore in default.

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

The entirety of the E LECLERC trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name contains the trademark, which is recognizable, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms "orlydistribution" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Finally, the ".com" generic Top-Level Domain ("gTLD") is not to be taken into consideration when examining the identity or similarity between the Complainant's trademarks and the disputed domain name. (*Accor v. Noldc Inc*, WIPO Case No. [D2005-0016](#)).

On this basis, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

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. 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.

Indeed, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it does not own any rights to the E LECLERC trademark, and the Complainant has never authorized or permitted the Respondent to use the E LECLERC trademark or use them to register any domain name consisting of the E LECLERC trademark.

The Panel also finds that the combination of the E LECLERC trademark with "ORLYDISTRIBUTION," which refers to the French company ORLY DISTRIBUTION (a member of the Complainant's organization that operates an E LECLERC store), further heightens the likelihood of confusion as the public might be led to believe the disputed domain name refers to this store.

Furthermore, e-mail servers have been configured on the disputed domain name which resolves to a page in construction. Thus, noting the composition of the disputed domain name, the Panel finds that there might be a risk that Respondent is engaged in a phishing scheme or that it may be used for misleading purposes, and in any case, such configuration is not indicative in itself of rights or legitimate interests. Therefore, the Panel considers that the disputed domain name is not used in any type of legitimate business or service.

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 Complainant has established that the registered E LECLERC trademarks long predated the registration of the disputed domain name. The Respondent reproduced in its entirety the Complainant's highly distinctive trademark E LECLERC in the disputed domain name. The confusing similarity in this choice demonstrates that the Respondent was fully aware of the fact that the disputed domain name incorporated such a well-known trademark.

Indeed, the Respondent, who lives in France, was likely aware of the Complainant's trademark rights at the time of registration in view of the Complainant's trademark reputation in France. Such awareness is indicative of bad faith registration as per established UDRP precedents. (*Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. John Peter*, WIPO Case No. [D2024-1764](#)).

The Panel also notes that the Respondent's use of the disputed domain name appears to be primarily for the purpose of attracting users for commercial gain on the Internet by creating a likelihood of confusion with the Complainant's trademarks.

Panels have found that the non-use of a domain name, including a "coming soon" page, would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or 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.

Moreover, email servers have been configured on the disputed domain name, which composition carries a risk of implied affiliation, and thus, the Panel finds that there might be a risk that the Respondent is engaged in a phishing scheme or that the disputed domain name may be used in a misleading manner. Indeed, the potential use of an email address with the disputed domain name presents a significant risk where the Respondent could aim at stealing valuable information, such as credit card details, from the Complainant's clients or employees. Such risk has been recognised by prior panel decisions. (*Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*, WIPO Case No. [D2017-1225](#)).

Therefore, having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitute bad faith under 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 <e-leclerc-orlydistribution.com> be transferred to the Complainant.

*/Nathalie Dreyfus/*

**Nathalie Dreyfus**

Sole Panelist

Date: November 7, 2024