

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Unl s, Sunl Case No. D2022-4256

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec, France, represented by Inlex IP Expertise, France.

The Respondent is Unl s, Sunl, China.

2. The Domain Name and Registrar

The disputed domain name <espaceculturelleclercgap.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 9, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 2022, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 10, 2022 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 November 14, 2022.

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 November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2022.

The Center appointed Andrew Brown K.C. as the sole panelist in this matter on December 12, 2022. 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 A.C.D. Lec (Association des Centres Distributeurs E. Leclerc). Leclerc refers to the last name of Mr. Edouard Leclerc, the founder and promotor of the Association.

The Complainant is a chain of supermarket and hypermarket stores in France. It has some 721 stores located across France. It also operates in several other European countries.

The Complainant is the proprietor of trade marks for the Mark LECLERC in a wide range of classes including:

Mark	Jurisdiction	Registration Date
002700656 LECLERC	European Union ("EU")	February 26, 2004
1307790 LECLERC	France	May 2, 1985

The Complainant claims to have goodwill and reputation in both their LECLERC Mark and also a concept it launched in 1990s namely Espace Culturel E Leclerc, which designates stores dedicated to culture and offering a range of cultural goods such as books, music, video games, movies, and electronic devices.

The Complainant owns the following trade marks:

Mark	Jurisdiction	Date
4024234 ESPACE CULTUREL logo	France	August 1, 2013
3865028 ESPACE CULTUREL E.LECLERC	France	October 7, 2011

The disputed domain name was registered on July 16, 2022. According to the evidence submitted with the Complaint, the disputed domain name resolved to what appeared to be a gambling site in Chinese.

5. Parties' Contentions

A. Complainant

The Complainant asserts its rights in the trade marks LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC. The Complainant contends that the disputed domain name reproduces identically the Complainant's trade marks LECLERC as well as the trademarks ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC in a very similar way, and is therefore confusingly similar. It says that the disputed domain name is confusingly similar to its trade marks.

The Complainant further submits that the addition of the geographic term "Gap" within the disputed domain name does not lessen the likelihood of confusion. The Complainant notes that "Gap" is a French city where it has an Espace Culturel E Leclerc establishment. The Complainant claims that the use of the geographic term reinforces the likelihood of confusion.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this respect, the Complainant states that the Respondent has no link of any nature with it. Further, the Complainant relies on the content of the associated website and the WHOIS database details for the disputed domain name. Neither of these indicate that the Respondent's name comprises "Leclerc" or "Espace Culturel" or that the Respondent is commonly known by either name.

The Complainant states that the Respondent has not been authorized by it to use the LECLERC or ESPACE CULTUREL trade marks and has not been licensed or authorized to use any of the Complainant's trade marks. Further, as just noted, the Respondent's name does not include "Leclerc".

The Complainant further states that the disputed domain name is not used in connection with a *bona fide* offering of goods or services, nor does it constitute a legitimate noncommercial fair use. The Complainant points to the Respondent's registration of the disputed domain name under anonymity and claims that this is commonly regarded as showing a lack of rights or legitimate interests.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant contends that "it is unlikely that the Respondent was unaware of the Complainant's activities and of the existence and use of its LECLERC and ESPACE CULTUREL E LECLERC trade marks" at the time of registration. The Complainant relies on the fact that its trade marks were well-known in France with a strong reputation and that 70 years after opening the first LECLERC store, the Complainant has become the first European organisation of independent storekeepers.

The Complainant relies too on its reputation in the LECLERC trade mark in Poland, Spain, Portugal and Slovenia. The Complainant says it is unlikely and implausible that the Respondent was unaware of the activities of the Complainant and of the existence of its trade marks at the time of registration of the disputed domain name.

The Complainant relies on the identical reproduction of the Complainant's trade marks as being evidence of bad faith registration. The Complainant says this because of the strong public awareness of its trade marks. The Complainant asserts that any attempt to actively use the disputed domain name would inevitably lead to a likelihood of confusion as to source, affiliation or endorsement amongst Internet users.

The Complainant relies on the Respondent's concealment of identity as also indicative of bad faith registration.

As to use in bad faith, the Complainant states that the disputed domain name redirects to an online sports gambling website in Chinese that then redirects to a "Restriction of visit" page also in Chinese. The Complainant says such use is deprived of any real and substantial offer of goods or services.

The Complainant claims that the disputed domain name disrupts its business and causes harm to its brand and image. Finally, it states that it wrote to the Respondent and also communicated by an online form available to reach the Respondent. No response was received. The Complainant states that despite several reminders, the Respondent still continues to use the disputed domain name with (now) full knowledge of the Complainant.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a Complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) That the disputed domain name is identical or confusingly similar to a trade 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.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of the LECLERC trade mark in the EU and in France, and its ESPACE CULTUREL and CULTUREL ESPACE E LECLERC trade marks in France. It has also provided evidence of extensive use of these trade marks in France and use of its LECLERC trade mark in other parts of Europe.

It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights in these trade marks. The Panel is satisfied that the Complainant is well-known by its LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC trade marks. In this regard the Panel notes that previous panels have recognized the existence of a likelihood of confusion between the Complainant's trade marks and the following domain names, which included, in some cases the name of French cities.

- <espace-culturel-leclerc.com> (*Association des Centres Distributeurs E. Leclerc v. Registration Private, Domains By Proxy, LLC / Zachary Palacios*, WIPO Case No. [D2018-2279](#));
- <leclercredon.com> (*Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Super Privacy Service LTD c/o Dynadot / ning ning, ning*, WIPO Case No. [D2022-1869](#));
- <recrutement-leclerc-arles.com> (*Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. yong xiong mei, meiyong xiong*, WIPO Case No. [D2022-0950](#));
- <Leclerc-oloron.com> (*Association des Centres Distributeurs E. Leclerc – ACD Lec v. Domain Administrator, See PrivacyGuardian.org / Daniel Sassmann*, WIPO Case No. [D2022-0992](#));
- <fr-leclercsaintaunes.com> (*Association des Centres Distributeurs E. Leclerc - ACD Lec contre Contact Privacy Inc. Customer 1247315396 / Nom anonymisé*, WIPO Case No. [D2020-2516](#)).

The Panel accepts that the disputed domain name is confusingly similar to the Complainant's LECLERC, ESPACE CULTUREL and ESPACE CULTUREL E.LECLERC trademarks.

As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "the [WIPO Overview 3.0](#)") section 1.8, "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element". It is the Panel's view that the addition of the term "Gap" to the Complainant's Marks does not prevent a finding of confusing similarity. The Complainant's LECLERC, ESPACE CULTUREL and ESPACE CULTUREL E LECLERC Marks remain clearly recognizable in the disputed domain name.

The Panel finds that the disputed domain name confusingly similar to the Complainant's LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC marks and finds in favor of the Complainant.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

- (i) That before notice of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) That the Respondent has been commonly known by the disputed domain name, even if it had acquired no trade mark or service mark rights; or

- (iii) That the Respondent is 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 trade mark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the LECLERC, ESPACE CULTUREL or ESPACE CULTUREL E.LECLERC trade marks pursuant to paragraph 4(c) of the Policy. The Complainant had (prior) rights in these trade marks which well preceded the Respondent's registration of the disputed domain name in July 2022.

The Panel is satisfied that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The fact that the Respondent has directed the disputed domain name to a website which redirected to an online gambling site demonstrates no rights or legitimate interests.

The Respondent has failed to show that it has acquired any rights or respect of the disputed domain name or that the disputed domain is used in connection with a *bona fide* offering of goods and services. The Respondent had the opportunity to demonstrate its rights or legitimate interests, but it did not reply to the Complainant's complaint.

The Panel therefore finds that the Complainant has satisfied the burden of establishing a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

C. Registered and Used in Bad Faith

The Panel is also satisfied that the disputed domain name has been registered in bad faith for the following reasons:

- (i) The Panel is satisfied that the Complainant's LECLERC and ESPACE CULTUREL E LECLERC Marks are well-known for retail services. The Panel is also satisfied that the Respondent was and is aware of the Complainant and its LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC marks at the time of registration. This is evidenced by the fact that the disputed domain name reproduces the ESPACE CULTUREL E LECLERC Mark entirely and adds to the geographic term "Gap" being a location in France where the Complainant has established an Espace Culturel undertaking. This combination demonstrates an awareness of the Complainant, its trade marks and one of the cities in which it operates under its two marks.
- (ii) paragraph 2 of the UDRP puts a burden on registrants where it states "by applying to a register a domain name or by asking us to maintain or renew a domain name registration, you hereby represent and bond to us that [...] to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of a third party [...]. It is your responsibility to determine whether your domain name infringes or violates someone else's rights". Even the most cursory trademark or other online search for any online search of existing domain names prior to the Respondent registering the disputed domain name would have instantly revealed the Complainant and its LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC marks. See in this regard section 3.2.3 of the [WIPO Overview 3.0](#).

The Respondent has made no substantive submission in this proceeding or sought to answer the Complainant's allegations. The Panel is entitled to draw adverse inferences from that failure

The Panel is also satisfied that the disputed domain name has been used in bad faith for the following reasons:

- (i) The Panel accepts that the disputed domain name disrupts and will disrupt the business of the Complainant and lead to Internet users familiar with the Complainant's LECLERC, ESPACE CULTUREL, and ESPACE CULTUREL E.LECLERC Marks and to be confused as to source, affiliation or endorsement with the Complainant.
- (ii) Again, the Respondent has made no submissions in these proceedings and so the Panel infers that the Respondent has intentionally used the disputed domain name within an intent to confuse people into thinking that it is controlled by or sponsored by the Complainant or is an entity affiliated with the Complainant.

Accordingly the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor of the Complainant.

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, <espaceculturelleclercgap.com> be transferred to the Complainant.

/Andrew Brown K.C./

Andrew Brown K.C.

Sole Panelist

Date: December 26, 2022