

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - ACD Lec v. ze dong zhan
Case No. D2023-1031

1. The Parties

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

The Respondent is ze dong zhan, China.

2. The Domain Name and Registrar

The disputed domain name <leclercvoyages.shop> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 2023, 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 (Privacyprotection.com, LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 10, 2023 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 March 14, 2023.

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 March 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 14, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on April 21, 2023. 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

According to information in the Complaint, the Complainant is a renowned chain of supermarkets and hypermarkets stores in France. The Complainant has about 721 stores in France, located all over the country. Additionally, the Complainant launched its concept “E.Leclerc Voyages” since more than 30 years (in English: E. Leclerc Travels) which designates stores dedicated to travels / booking and that have been widely established in France with more than 200 stores in France. In 2019, the turnover of the Complainant was EUR 48.20 billion in France, and the Complainant employs approximately 133,000 people.

The Complainant has registered various trademarks consisting of or including LECLERC or LECLERC VOYAGES, such as the French trademark registration for LECLERC (word), registered under No. 1307790 as of May 2, 1985, and the French trademark registration for LECLERC VOYAGES (word), registered under No. 1418425 as of December 25, 1987. The Complainant has registered the domain name <leclercvoyages.com> since November 24, 1999.

The disputed domain name was registered on January 5, 2023, and does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the disputed domain name reproduces identically the Complainant’s trademark LECLERC VOYAGES and is confusingly similar with its trademark LECLERC. The Complainant’s trademark LECLERC has no meaning in French or English and is highly distinctive. The addition of the term “voyages” (“travels” in English) does not lessen the inevitable risk of confusion since the association of this term and the name Leclerc directly refers to the Complainant’s activities and trademarks.

As regards the second element, the Complainant argues that it has not authorized, licensed, or permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating the Complainant’s trademarks. Moreover, there is no business relationship existing between the Complainant and the Respondent. The disputed domain name points to an error page and therefore, it is neither used in connection with a *bona fide* offering of goods or services, nor it constitutes a legitimate noncommercial fair use. The Respondent is not commonly known by the disputed domain name.

With respect to the third element, the Complainant argues that the disputed domain name was registered in bad faith as it is unlikely that the Respondent was unaware of the Complainant’s activities and its trademarks at the registration date, given that the Complainant’s LECLERC supermarket / hypermarket network and trademark are well-known in France and in several other European countries. Also, the Respondent’s concealment of its identity is also indicative of bad faith. The disputed domain name initially led to an error page and now points to an inactive page. Such use is clearly devoid of any real and substantial offer of goods or services and cannot be considered a legitimate noncommercial or fair use. Since the disputed domain name incorporates in an identical or similar way the Complainant’s trademarks, the Internet users may wrongly believe that the websites to which it resolves is the Complainant’s website or that the Complainant’s website is not correctly functioning or has been hacked.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the LECLERC and LECLERC VOYAGES trademarks. The disputed domain name is identical to the LECLERC VOYAGES trademark of the Complainant. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. It is well accepted by UDRP panels that a generic Top-level-Domain (“gTLD”), such as “.shop”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is identical to the Complainant’s LECLERC VOYAGES trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the LECLERC and LECLERC VOYAGES trademarks and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to bring evidence to the contrary.

Moreover, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety cannot be considered fair as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The Respondent has not denied knowledge of the Complainant. Under these circumstances, and also given the Complainant's trademarks are well-known and the confusing similarity between the disputed domain name and the Complainant's trademarks, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and with intention to target those trademarks.

As regards the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel finds that passive holding of the disputed domain name does not, in the circumstances of this case, prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademarks of the Complainant are well-known and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

Based on the evidence and circumstances of this case, the Panel concludes that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

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 <leclercvoyages.shop> be transferred to the Complainant.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: May 5, 2023