

ADMINISTRATIVE PANEL DECISION

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

Dingane Bernard

Case No. D2023-1421

1. The Parties

1.1 The Complainant is Association des Centres Distributeurs E. Leclerc – A.C.D. Lec., France, represented by Inlex IP Expertise, France (the “Complainant”).

1.2 The Respondent is Dingane Bernard, Côte d’Ivoire (the “Respondent”).

2. The Domain Name and Registrar

2.1 The disputed domain name <eleclerc-eu.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 4, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 April 5, 2023.

3.2 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”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2023.

3.4 The Center appointed Ike Ehiribe as the sole panelist in this matter on May 11, 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

4.1 The Complainant is a French association which goes by the name ACD Lec (Association Des Centres Distributeurs E. Leclerc) with its offices in France. The name Leclerc is the last name of the founder and promoter of the association who is known as Mr. Leclerc. The Complainant is one of the most renowned chains of supermarkets with about 721 stores all over France and around 100 in other European countries. The Complainant has 22% market share of the grocery market in France as at the beginning of 2022 and is described as the leader of large scale distribution in France. Furthermore, in 2019, the turnover of the Complainant was EUR 48.20 billion with approximately 133,000 employees. In addition, the Complainant owns several well-known trademark registrations of the E LECLERC trademark in France and in the European Union with which the Complainant conducts its nationwide distribution business as clearly indicated in annexes attached to the Complaint. For instance, the European Union trademark E LECLERC No. 002700664 filed on May 17, 2002 and registered on January 31, 2005. See also extracts from the Complainant's websites attached to the complaint, namely, "www.mouvement.leclerc"; "www.e.leclerc", etc.

4.2 The Respondent is based in Côte d'Ivoire. According to the Whois database the Disputed Domain Name <eclerc-eu.com> was registered on January 27, 2023 and resolves to what appears to be an active website, containing a link which when clicked redirects to the Complainant's website at "www.e.leclerc".

5. Parties' Contentions

A. Complainant

5.1 The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's well-known E LECLERC trademark since the Disputed Domain Name wholly reproduces the Complainant's trademark entirely. In support reliance is placed on a previous UDRP decision in *Facebook Inc. v. Global Domain Privacy Services Inc. /Evgeniy Gavonov*, WIPO Case No. [DME2019-0011](#). The Complainant further asserts that the word "e leclerc" has no meaning in French or English language and is highly distinctive. In addition, it is argued that the addition of the letters "eu" within the Disputed Domain Name does not lessen the likelihood of confusing similarity, on the contrary it is submitted that the addition of those letters would increase the risk of confusion since the letters refer to the European Union where the Complainant operates most of its stores and provides services. Secondly, the Complainant asserts that the ".com" extension should be disregarded when conducting a confusing similarity enquiry as it is settled case law that the applicable Top-Level Domain ("TLD") in a domain name is viewed as a standard registration requirement.

5.2 The Complainant also contends that the Respondent has no legitimate interests or rights in the use of the Disputed Domain Name for a number of under listed reasons as follows: (1) the Whois database details do not indicate that the Respondent is commonly known by the Disputed Domain Name or is linked to an official registered company named "e leclerc" or has rights including trademark rights on the name "e leclerc"; (2) the Respondent has not been authorised, licensed or permitted by the Complainant to the use of the name "e leclerc" in any domain name incorporating the Complainant's trademark; (3) the Disputed Domain Name is neither used in connection with a *bona fide* offering of goods or and services nor constitutes a legitimate non-commercial fair use; (4) a link on the Disputed Domain Name redirects to the Complainant's official website at "www.e.leclerc" which has not been authorised by the Respondent; (5) the Respondent registered the Disputed Domain Name under anonymity which has commonly been considered to be indicative of a lack of rights or legitimate interests in the disputed domain name by previous UDRP panels; (6) the Respondent failed or omitted to respond to cease and desist letters of diverse dates from the Complainant.

5.3 The Complainant finally asserts that the Disputed Domain Name was also registered in bad faith and to engage in bad faith use for the following reasons. In the first instance, it is argued that the Respondent could not have been unaware of the Complainant's activities and the use of the trademark E LECLERC at the time the Respondent decided to create the Disputed Domain Name considering the world-wide reputation of the Complainant's activities in France and in other European countries, ongoing for almost 70 years. Secondly, the mere fact that the Respondent registered the Disputed Domain Name which reproduces in an identical manner the Complainant's trademark. Thirdly, the reservation of a domain name reproducing in an identical manner the Complainant's trademark cannot be a mere coincidence and clearly demonstrates that the Respondent was fully aware of the Complainant's trademark and business activities. Fourthly, the Respondent's registration of the Disputed Domain Name anonymously with the use of a privacy service is further evidence of bad faith registration; Fifthly, since the MX servers are still configured to operate with the Disputed Domain Name, it is believed the Respondent could use the MX servers for phishing purposes by sending fraudulent emails and finally it is contended that the Disputed Domain Name disrupts the Complainant's business and causes damage to the Complainant's brand image.

B. Respondent

5.4 The Respondent did not reply to the Complainant's contentions, therefore, the Panel shall draw adverse inference from the failure of the Respondent to react to the Complainant's contentions.

6. Discussion and Findings

6.1 Under paragraph 4(a) of the Policy, to succeed in the administrative proceedings the Complainant must prove that: (1) the Disputed Domain Name is identical and or confusingly similar to the trademark or service mark of the Complainant; (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and (3) the Disputed Domain Name has been registered and is being used in bad faith.

6.2 As expressly stated in the Policy, the Complainant must establish the existence of each of these three elements in any UDRP proceeding.

A. Identical or Confusingly Similar

6.3 The Panel finds and accepts that the Complainant is a well-known supermarket chain in France and in countries in the European Union; and evidently the registered owner of numerous trademark registrations of the E LECLERC trademark, and websites incorporating the E LECLERC trademark.

6.4 The Panel therefore finds that upon a visual examination of the Disputed Domain Name, the said Disputed Domain Name is confusingly similar to the Complainant's trademark E LECLERC. See in support section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel also accepts that the addition of the letters "eu" does not prevent a finding of confusing similarity under the first element.. The Panel also finds that the mere addition of the generic TLD ".com" does nothing to prevent a confusing similarity finding. See also section 1.11 of the [WIPO Overview 3.0](#).

6.5 The Panel is therefore satisfied that the Complainant has established the confusing similarity requirement as the first element of the Policy.

B. Rights or Legitimate Interests

6.6 With regards to rights or legitimate interest in the Disputed Domain Name, the Panel is satisfied that the Complainant has advanced cogent reasons to demonstrate that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name as follows: (1) there is no evidence whatsoever in the Whois database or elsewhere that indicates that the Respondent has been commonly known or associated with the E LECLERC trademark; (2) the Respondent has never been licensed, permitted or authorised to

use the E LECLERC trademark to register the Disputed Domain Name or any other domain name; (3) the Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of goods and or services nor in legitimate non-commercial fair use; (4) the Disputed Domain Name contains a link which when clicked redirects to the Complainant's website at "www.e.leclerc"; and (6) the Respondent registered the Disputed Domain Name under anonymity with the use of a privacy service which in itself has been held to be clear evidence of lack of rights and or legitimate interests following the decision in *Swissquote Group Holding SA v. Super Privacy Service Ltd c/o Dynadot*, WIPO Case No. [D2019-2364](#).

6.7 In the circumstances, the Panel is satisfied that the Complainant, having made out a *prima facie* case which remains unrebutted by the Respondent, has fulfilled the second requirement of the Policy.

C. Registered and Used in Bad Faith

6.8 On the question of bad faith registration and use, the Complainant has drawn attention to a number of irrefutable factors which demonstrate that the Respondent deliberately registered the Disputed Domain Name in bad faith with the intention of engaging in bad faith use. In the first instance, it is inconceivable that the Respondent was not aware of the Complainant's activities and prior rights in the E LECLERC trademark considering the Complainant's supermarket related activities in France and countries in the European Union for the past 70 years before electing to register the Disputed Domain Name on January 27, 2023. Secondly, the Complainant rightly asserts that it could not have been by mere coincidence that the Respondent elected to reserve a domain name for registration that reproduces the Complainant's trademark in its entirety. Thirdly, the Complainant relies on the fact that the Respondent made use of a privacy service to anonymously register the Disputed Domain Name. Fourthly, the Complainant draws attention to not only the failure of the Respondent to react to a number of cease and desist letters dispatched by the Complainant, but also to the fact that MX servers are configured to operate with the Disputed Domain Name which is a clear indication that the Respondent may use the Disputed Domain Name for phishing purposes and/or the dispatch of fraudulent emails. In addition to the foregoing, fifthly, as indicated in paragraph 5.4 above, the Panel has drawn adverse inferences from the failure of the Respondent to respond to the contentions of the Complainant contained herein.

6.9 Accordingly, the Panel finds that the Complainant has satisfied the third requirement of the Policy.

7. Decision

7.1 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 <eleclerc-eu.com> be transferred to the Complainant.

/Ike Ehiribe/

Ike Ehiribe

Sole Panelist

Date: June 5, 2023