

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec. v. Huang Hechang, xiamen xiangsuchuhai technology Ltd.
Case No. D2023-3267

1. The Parties

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

Respondent is Huang Hechang, xiamen xiangsuchuhai technology Ltd., China.

2. The Domain Names and Registrar

The disputed domain names, <eleclercdeals.com>, <eleclercdiscount.com>, <eleclercfactory.com>, <eleclercflash.com>, <eleclercinc.com>, <eleclercine.com>, <eleclercmall.com>, <eleclercmarket.com>, <eleclercofficial.com>, <eleclercsale.com>, <eleclercstore.com>, and <eleclercstyle.com>, are registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2023. On July 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on August 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 1, 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 Respondent of the Complaint, and the proceedings commenced on August 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 25, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 4, 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant operates a chain of supermarkets and hypermarket stores in France under a trademark based on the name of its founder, E. LECLERC (the "LECLERC Mark"). Complainant operates 721 stores located all over France and another 100 in Spain, Portugal, Poland, and Slovenia and asserts its chain of stores and the LECLERC Mark is well known in France as well as other European countries. Complainant employs approximately 133,000 people and its 2019 turnover in France was EUR 48.20 billion.

Complainant owns the following trademark registrations protecting the LECLERC Mark:

- European Union Trademark Registration No. 002700664, E LECLERC, registered on January 31, 2005, for goods and services in International Classes 1- 45.
- European Union Trademark Registration No. 011440807, E.LECLERC (stylized font with design), registered on May 27, 2013, for goods and services in International Classes 1- 45.

All 12 of the disputed domain names were registered between April 8, 2023, and May 12, 2023, by the same Registrar to the same registrant, Respondent Huang Hechang, xiamen xiangsuchuhai technology Ltd., China, as disclosed in the Registrar's verification response emailed to the Center. At the time Complainant initially became aware of the disputed domain names registered by Respondent, all twelve resolved to fake commercial websites with false and erroneous contact data: some of which offered goods in competition with Complainant's goods, e.g., <eleclercdeals.com>; some provided illegal phishing schemes, e.g., <eleclercdiscount.com>; some had content in French corresponding to the language of Complainant's country of origin where it primarily operates its business, e.g., <eleclercdeals.com>, <eleclercdiscount.com>, <eleclercfactory.com>, <eleclercflash.com>, <eleclercofficial.com>, <eleclercsale.com>, <eleclercstore.com>; some provided copycat websites that included Complainant's logo as a favicon in the Internet browser tab for the website, e.g., <eleclercdeals.com>, <eleclercflash.com>, <eleclercofficial.com>, <eleclercsale.com>, <eleclercstore.com>; and some included contact emails associated with online scams or websites that have been flagged for harmful content, phishing, and other malicious use.

As of the filing of the Complaint, after Complainant's counsel sent three deactivation requests to the Registrar and hosting provider for each of the 12 disputed domain names, some have been deactivated or blocked, some have been redirected to parking pages with commercial links dedicated to Complainant's field of activity, and one, <eleclercinc.com>, redirects to a new copycat website page offering clothing under a different name. The use and content of the websites associated with each of the disputed domain names changes regularly and each has evolved multiple times since their original detection by Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain names. Complainant contends that each of the disputed domain names is identical or confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of each of the disputed domain names; and that the disputed domain names were registered and are being used in bad faith.

Notably, Complainant contends that the disputed domain names identically reproduce Complainant's LECLERC Mark in its entirety with the addition of various generic English terms, namely:

- "deals", "discount", "flash", "line", "mall", "market", "sale", "store", "style" that can all refer to Complainant's field of activity (supermarkets/hypermarkets); "factory", "inc", "official" which are commonly used by companies in the course of business in order to identify themselves, their stores or their official website none of which additions are sufficient to prevent a finding of confusing similarity with Complainant's LECLERC Mark.

Complainant submits that there are no rights or legitimate interests held by Respondent in respect of the disputed domain names. Respondent is not commonly known by any of the disputed domain names, nor does Respondent have any authorization or license from Complainant to use the LECLERC Mark or to register any of the disputed domain names.

Complainant contends that the fact that each disputed domain names contains the LECLERC Mark together shows that the aim of Respondent in each case is to confuse Internet users searching for Complainant's products or services into thinking that they had arrived at Complainant's website and to create a false link between Complainant's LECLERC Mark and each of the disputed domain names.

Respondent is not making a legitimate noncommercial or fair use of any of the disputed domain names. Rather Respondent is the majority of the disputed domain names to resolve to parking websites that provide links to content purportedly selling clothing, jewelry, kitchen utensils, fishing equipment or other retail goods in competition with Complainant's goods under Complainant's LECLERC Mark, without permission or consent from Complainant. Such use does not amount to a *bona fide* offering of goods and services and can never confer rights or legitimate interests on a respondent, nor can such unauthorized impersonation to sell goods constitute a legitimate noncommercial or fair use of any of the disputed domain names. None of these resolving sites contain disclaimers accounting for their connection (or lack thereof) to Complainant. The remaining disputed domain names either have not been actively used by Respondent or are in use to display and distribute harmful content, enable phishing, and other malicious use. Respondent's non-use of the remaining passively held disputed domain names does not confer it with a right or legitimate interest nor would use of a domain to further an illegitimate purpose or phishing scheme.

Complainant contends that the disputed domain names were registered and are being used in bad faith. First, Complainant asserts that the LECLERC Mark is well recognized in France and Europe and therefore, Respondent must have been aware that it would be registered as a trademark in various jurisdictions. Complainant's earliest LECLERC Mark registration also predates the registration of all of the disputed domain names by almost two decades and its use predates Respondent's registration by almost 70 years. Complainant submits, therefore, that Respondent knowingly registered each of the disputed domain names in bad faith with the intention of targeting Complainant's LECLERC Mark to trade off the goodwill and reputation attaching to Complainant's LECLERC Mark. Complainant contends that Respondent's use of the disputed domain names is to capitalize on the reputation of Complainant's trademark by diverting Internet users seeking Complainant's services to its websites for financial gain, by intentionally creating a likelihood of confusion with Complainant's registered trademarks as to the source, sponsorship, affiliation, or endorsement of its websites and/or the goods and services offered or promoted through the websites. Complainant contends, therefore, that Respondent's conduct amounts to registration and use of each of the disputed domain names in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In view of Respondent's failure to submit any Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a), and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable, and supported, allegations and inferences set forth in the Complaint as true, unless the evidence is clearly contradictory.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, the *onus* is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. 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.

The Panel will deal with each of these requirements in turn.

As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

6.1. Consolidation

Complainant requests that the proceedings for each of the disputed domain names be consolidated on the basis that they are all under common control based on factors relied upon by prior UDRP panels in ruling upon such requests. The Rules contemplate that a panel may consolidate multiple domain name disputes (UDRP Rules, paragraph 10(e)). The consensus of prior UDRP panels is that a Complainant may proceed against multiple domain names all registered by the same registrant, which is the case here for all 12 of the disputed domain names, as shown in Complainant's Annexes. The Panel finds, therefore, it is appropriate and efficient to determine Complainant's UDRP claims for multiple domain names in the same proceeding. See [WIPO Overview 3.0](#), section 4.11.2.

6.2. Substantive Issues

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the entirety of Complainant's LECLERC Mark is reproduced within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Mark for the purposes of the Policy.

While the addition of other terms, here, "deals", "discount", "flash", "line", "mall", "market", "sale", "store", "style", "factory", "inc", "official" (a typo of "official"), 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Complainant has shown that there are no rights or legitimate interests held by Respondent in respect of the disputed domain names. Respondent is not commonly known by any of the disputed domain names, nor does Respondent have any authorization or license from Complainant to use the LECLERC Mark or to register any of the disputed domain names.

As noted above in Section 4, Complainant has also shown the disputed domain names initially pointed to copycat websites selling goods in competition with Complainant under Complainant's LECLERC Mark as commercial websites with false and erroneous contact data to mislead unwary consumers searching for Complainant and its supermarket/hypermarket goods in furtherance of illegal phishing schemes and using emails linked to known online scams and websites reported as fraudulent by credible fraud reporting sites.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 Panel notes that for each of the disputed domain names Complainant has shown that Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's LECLERC Mark which constitutes registration and use of the disputed domain names in bad faith under paragraph 4(b)(iv) of the Policy. The circumstances here clearly show Respondent was aware of Complainant's leading retail supermarket business and well-known LECLERC Mark when it registered 12 disputed domain names within essentially a one month period from the same Registrar to configure copycat websites selling goods that Complainant sells, even including Complainant's registered logo as favicons in the browser tabs for Respondent's web pages. The fact that the Respondent combined the Complainant's Mark with added terms commonly used and descriptive of the retail industry wherein the Complainant operates reinforces a finding that the Respondent sought to target the Complainant and mislead unsuspecting Internet users. The Panel finds that Respondent targeted Complainant and its LECLERC Mark and registered and used the disputed domain names in bad faith. See, *American Airlines, Inc. v. Andrew Morrill, flybrix llc*, WIPO Case No. [D2023-0635](#).

Respondent's use of the disputed domain names to pretend that it is Complainant or to falsely associate itself with Complainant and purportedly sell competing products from its imposter websites also "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the disputed domain name[s supporting these copycat websites] primarily for the purpose of disrupting the business of a competitor, namely the Complainant." See *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As additional evidence of bad faith registration and use of the disputed domain names Complainant shows that Respondent continued to use the disputed domain names for evolving copycat websites with false contact information to elicit personal and financial information from consumers in furtherance of an illegal phishing scheme, also changed names of the business on its webpages after Complainant sent letters to Respondent to resolve the matter as well as deactivation requests to the Registrar and hosting provider for each of the disputed domain names. See, *Kimley-Horn and Associates, Inc. v. Abraham Hashim*, WIPO Case No. [DCO2019-0017](#).

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

As for the disputed domain names which are inactive, prior UDRP Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness and reputation of Complainant's trademark as well known by prior UDRP panels, and the composition of each of the disputed domain names incorporating Complainant's LECLERC Mark in its entirety, and finds that in the circumstances of this case the passive holding of the disputed domain

names does not prevent a finding of bad faith under the Policy. See *Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy*, See [PrivacyGuardian.org /pastal dolly malhotra](https://www.privacyguardian.org/pastal-dolly-malhotra), WIPO Case No. [D2021-0037](https://www.wipo.int/amc/en/decisions/index.php?lang=en&id=5037); see also *Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Domain Administrator*, See [PrivacyGuardian.org /cunshuo zhang](https://www.privacyguardian.org/cunshuo-zhang), WIPO Case No. [D2019-1580](https://www.wipo.int/amc/en/decisions/index.php?lang=en&id=5030).

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

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 names, <eleclercdeals.com>, <eleclercdiscount.com>, <eleclercfactory.com>, <eleclercflash.com>, <eleclercinc.com>, <eleclercine.com>, <eleclercmall.com>, <eleclercmarket.com>, <eleclercofficial.com>, <eleclercsale.com>, <eleclercstore.com>, and <eleclercstyle.com>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: September 19, 2023