

## ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – ACD Lec. v.

Name Redacted

Case No. D2023-4351

### 1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc – ACD Lec., France, represented by MIIP MADE IN IP, France.

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <supermarches-eleclerc.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 October 20, 2023. On October 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 20, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 23, 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 October 24, 2023.

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<sup>11</sup>The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 27, 2023. A third party sent an email communication to the Center on November 23, 2023.

The Center appointed Jane Seager as the sole panelist in this matter on December 12, 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**

Founded in 1948, the Complainant, Association des Centres Distributeurs E. Leclerc – A.C.D. Lec, is a French association, headquartered in France. The Complainant operates a chain of supermarkets and hypermarkets, with some 735 locations in France, as well as approximately 100 locations in other European countries, including Poland, Portugal, Slovenia, and Spain. The Complainant employs approximately 140,000 people and reported an annual turnover of EUR 55.6 billion in 2022.

For use in connection with the Complainant’s retail operations, the Complainant owns a number of trademarks, including:

- European Union Trade Mark No. 002700664, E LECLERC, registered on January 31, 2005; and
- European Union Trade Mark No. 011440807, E.LECLERC (figurative), registered on May 27, 2013.

The disputed domain name was registered on August 28, 2023. Screen captures provided by the Complainant indicate that on September 20, 2023, the disputed domain name resolved to a blank parking page. Further to a request submitted by the Complainant to the Registrar, the disputed domain name was placed in clientHold status and no longer resolves to an active web page.

On September 22, 2023, the Complainant sent an email communication to the Respondent, putting the Respondent on notice of the Complainant’s trademark rights and requesting transfer of the disputed domain name. The Complainant sent reminders to the Respondent on September 29, 2023, and on October 6, 2023. The Respondent did not reply to the Complainant’s communications.

On November 23, 2023, the Center received an email communication from a third party, further to receipt of the Center’s Written Notice, alleging that the disputed domain name had been registered making unauthorized use of third-party personal identifying information.

#### **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.

The Complainant asserts rights in the trademark E LECLERC and submits that the disputed domain name is confusingly similar to its trademark. The Complainant argues that the addition of the French term “supermarchés” (expressed in the disputed domain name as “supermarches” without the accent on the letter “e”), or “supermarkets” in English, is insufficient to avoid any risk of confusion. Rather, claims the Complainant, the addition of such a term increases confusion noting that it directly refers to the Complainant’s activities as the operator of a large chain of supermarkets in France.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that no authorization has been granted to the Respondent for it to make use of the Complainant’s name or trademark. The Complainant contends that the Respondent’s use of the disputed domain name does not amount to a *bona fide* offering of goods or services, nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name. The Complainant further submits that the Respondent is not commonly known by the disputed domain name.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant claims to have acquired substantial reputation in connection with its retail activities in France and elsewhere in Europe. The Complainant notes that the Respondent appears to be based in France, further notes the composition of the disputed domain name itself consisting of the Complainant’s trademark together with the French term “supermarchés”, and infers that the Respondent must have been aware of the Complainant and its trademark rights when registering the disputed domain name. The Complainant observes that its pre-Complaint attempts to contact the Respondent went unanswered, that the Respondent concealed its identity by registering the disputed domain name using a privacy service, and notes that the Respondent has not made any apparent active use of the disputed domain name to date. The Complainant further notes that Mail Exchange records were configured for the disputed domain name, creating risk that the disputed domain name could be used for phishing purposes. Finally, the Complainant submits that the disputed domain name disrupts the Complainant’s business and causes harm to the Complainant’s brand image in that Internet users seeking the Complainant that are misled to the web page to which the disputed domain name resolved could mistakenly believe that the Complainant’s website was not active.

The Complainant requests transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions

## **6. Discussion and Findings**

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **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.

Based on the available record, the Panel finds the 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 the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of a hyphen and the term “supermarches” may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name 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 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.

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

## **C. Registered and Used in Bad Faith**

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.

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 available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes that the Complainant has established reputation in the E LECLERC trademark; notes the composition of the disputed domain name which comprises the Complainant's E LECLERC trademark together with the element "supermarches", which may be read as a direct reference to the Complainant's core area of business; further notes that the disputed domain name was registered under privacy and that the Respondent appears to have made unauthorized use of the personal identifying information of an unrelated third party in the underlying registrant details for 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.

Based on the available record, 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 <supermarches-eleclerc.com> be transferred to the Complainant.

*/Jane Seager/*

**Jane Seager**

Sole Panelist

Date: December 26, 2023