

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. joseph naik
Case No. D2022-3570

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 joseph naik, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <lecl-leclerc.click> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 27, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 28, 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 September 29, 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 September 30, 2022.

On October 12, 2022 and October 13, 2022, the Respondent sent informal email communications.

In accordance with the Rules, paragraph 5, the due date for the response was October 20, 2022. The Respondent did not submit any formal response. Accordingly, on October 21, 2022, the Center notified the Parties that it will proceed to Panel Appointment.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on October 28, 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 that operates the renowned “LECLERC” chain of supermarkets and hypermarket stores. The founder and the promoter of the Complainant is Mr. Edouard Leclerc. The Complainant has 721 stores located in France and around 100 stores in other European countries such as Poland, Spain, Portugal and Slovenia. The LECLERC mark is thus particularly well known in France and other European countries. As at the beginning of 2022, the Complainant was one of the largest grocery market chains in Europe. In 2019, the Complainant employed approximately 133,000 people in France and had a turnover of EUR 48.2 billion.

The Complainant is the owner of a number of trademark registrations for the LECLERC mark in various countries and classes, including, *inter alia*, European Union Trademark Registration No. 002700656 in Classes 1 to 45 registered on February 26, 2004; and French Trademark Registration No. 1307790 in Classes 1 to 35 and 39 registered on May 2, 1985 (together, the “Complainant’s Trademark”).

The Disputed Domain Name was registered by the Respondent using the anonymous registration services of Withheld for Privacy ehf on June 20, 2022, which is more than 37 years after the Complainant’s Trademark was first registered. The Disputed Domain Name currently resolves to an “index” page which invites Internet users to open a file named “cgi-bin”. Based on mail exchange record lookup performed by the Complainant on August 16, 2022, this index page contains links to email servers for unclear reasons.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. The only elements which differentiate the Disputed Domain Name from the Complainant’s Trademark are the additions of the word “lecl-” and the Top-Level Domain (“TLD”) “.click”.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence to suggest that the Respondent has acquired any trademarks rights for the LECLERC mark or that the Respondent is commonly known by the Disputed Domain Name. Moreover, the Respondent has not received any license or other authorization of any kind to make use of the Complainant’s Trademark as part of a domain name or otherwise. Furthermore, the Complainant contends that by resolving to a webpage that invites Internet user to open a file with email servers set up on it, the Respondent has used the Disputed Domain Name for a fraudulent purpose which is not legitimate non-commercial fair use.
- (c) Both the Respondent’s registration of and its use of the Disputed Domain Name establish the Respondent’s bad faith. The Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when it registered the Disputed Domain Name and used the Complainant’s Trademark because of the wide-spread reputation acquired by the Complainant in the

Complainant's Trademark. Moreover, the use of anonymous registration by the Respondent, the lack of right or legitimate interest in the Disputed Domain Name and the lack of legitimate or fair use of the Disputed Domain Name indicate bad faith. Furthermore, the Disputed Domain Name diverts Internet users by virtue of the association between the Disputed Domain Name and the Complainant's Trademark and harms the Complainant by misleading the Complainant's customers into incorrectly thinking that the Complainant's website is not correctly functioning. Therefore, given these factors, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

However, the Respondent submitted informal email communications on October 12 and October 13, 2022, stating, *inter alia*, that:

- (a) The Respondent believed the Complainant did not own any rights in the LECLERC mark anywhere in the world;
- (b) The Respondent registered the Disputed Domain Name in connection with *bona fide* offering of goods; and
- (c) The Respondent was willing to sell the Disputed Domain Name to the Complainant at a "reasonable price".

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark based on the various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the TLD extension, ".click" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the prefix "lecl-" in front of the Complainant's Trademark. UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless or otherwise) will not prevent the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.8 of the [WIPO Overview 3.0](#). The Panel therefore finds that the mere addition of the prefix "lecl-" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

The Panel further notes that the ownership of a trademark generally satisfies the threshold requirement of having trademark rights, the geography for which the trademark is registered being irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. See sections 1.1.2 and 1.2.1 of the [WIPO Overview 3.0](#).

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a formal Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him of the dispute, the Respondent made use of, or has undertaken 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) The Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Although the Respondent asserted that he registered the Disputed Domain name with good intention for his business, there is no evidence to suggest 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.

The Panel agrees with the Complainant that no evidence has been provided to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

The Panel also agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate non-commercial or fair use. The Respondent uses the Disputed Domain Name to divert Internet users to other websites, which may mislead the Complainant's customers into

thinking that the Complainant's website is malfunctioning, when it is not. Such uses tarnish the Complainant's Trademark and are not legitimate fair use. See section 2.4 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDPR panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be fairly well known. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and the Complainant's Trademark rights when registering and using the Disputed Domain Name.

The Panel also agrees with the Complainant that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The Respondent registered the Disputed Domain Name using a privacy shield to conceal its identity (see *Primonial v. Domain Administrator, PrivacyGuardian.org / Parla Turkmenoglu*, WIPO Case No. [D2019-0193](#)).
- (ii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name contains the Complainant's Trademark in its entirety.
- (iii) The Respondent also failed to provide evidence of any actual or contemplated good faith use by it of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been 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 <lecl-leclerc.click> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: November 11, 2022