

## **ADMINISTRATIVE PANEL DECISION**

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. da hua ren  
Case No. D2022-3646

### **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 da hua ren, China.

### **2. The Domain Name and Registrar**

The disputed domain name <leclerc-st-orens.com> is registered with Hong Kong Juming Network Technology Co., Ltd (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 30, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 October 20, 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 November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 23, 2022.

The Center appointed Federica Togo, as the sole panelist in this matter on November 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 the registered owner of European Union Trade Mark registration no. 002700656 LECLERC registered on February 26, 2004, for several goods and services in the Classes 1 to 45. This trademark has been duly renewed and is in force.

The disputed domain name was registered on July 20, 2022, and resolves to an inactive webpage.

Finally, the Complainant sent a cease and desist letter to the Respondent on August 11, 2022, through the Registrar. The Registrar confirmed on August 17, 2022 that it had been sent to the Respondent. The Respondent did not reply to it.

#### **5. Parties' Contentions**

##### **A. Complainant**

It results from the Complainant's undisputed allegations that it is a French association and LECLERC refers to the last name of the founder and promoter of the association. It is one of the most renowned chain of supermarkets and hypermarkets stores in France and has about 721 LECLERC stores in France, located all over the country and around 100 in the other European countries where the Complainant runs its business. In addition, the Complainant employs approximately 133,000 persons.

The Complainant contends that its trademark LECLERC is highly distinctive and well-known.

The Complainant further contends that the disputed domain name is identical to the Complainant's earlier trademark, since it fully incorporates the Complainant's trademark. The mere addition of the geographic term "st-orens" does not lessen the inevitable confusion between the disputed domain name and the Complainant's trademark LECLERC. On the contrary, this association increases the risk of confusion since "st-orens" refers to a French city (Saint-Orens de Gameville), city where the Complainant has a Leclerc store and offers its services.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent has not been authorized by the Complainant to use the name "leclerc". The Complainant has not been 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. Furthermore, the Respondent is not commonly known under the name "leclerc" and 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. Indeed, since its detection, the disputed domain name is pointing to an inactive page.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. In fact, it is unlikely that the Respondent was unaware of the Complainant's activities and of the existence and use of the trademarks LECLERC at the time the registration was made, since the Complainant's LECLERC supermarket / hypermarket network and trademarks are well known. Furthermore, since the disputed domain name incorporates in the identical way the Complainant's trademarks, the Internet users and especially the Complainant's customers 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**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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 in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of European Union Trade Mark registration no. 002700656 LECLERC. This trademark has been duly renewed and is in force.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7).

This Panel shares this view and notes that the Complainant's registered trademark LECLERC is fully included in the disputed domain name, followed by a hyphen “-” and the term “st-orens”. Furthermore, it is the view of this Panel that the addition of the term “st-orens” and the hyphen “-” in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain name (see [WIPO Overview 3.0](#) at section 1.8).

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark LECLERC, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered and well-known trademark LECLERC (see *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Super Privacy Service LTD c/o Dynadot / ning ning*, ning, WIPO Case No. [D2022-1869](#)) and that the trademark LECLERC is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name fully containing the Complainant's trademark with the intent to attract Internet users for commercial gain (e.g., *Bayer AG v. Privacy service provided by Withheld for Privacy ehf / farm construction, BAYERCROP POLAND*, WIPO Case No. [D2022-1043](#); *Carrefour SA v. Matias Barro Mares*, WIPO Case No. [D2020-3088](#)).

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#) at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly 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.

Based on the evidence submitted by the Complainant, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark LECLERC is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed LECLERC mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith (see e.g., *Carrefour SA v. Matias Barro Mares*, WIPO Case No. [D2020-3088](#)).

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Complainant's trademark LECLERC is well known; (2) the Respondent failed to submit a response or to provide any evidence of actual or contemplated good faith use; (3) the implausibility of any good faith use to which the disputed domain name (composed of the

Complainant's well known trademark and a geographical term that refers to a city where the Complainant offers its services) may be put (see [WIPO Overview 3.0](#) at section 3.3); (4) finally, the Respondent's failure to reply to the cease and desist letter sent by the Complainant through the Registrar.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) 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, <leclerc-st-orens.com> be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: December 12, 2022