

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – ACD Lec v. Pandi Panda Case No. D2023-1009

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc – ACD Lec, France, represented by Inlex IP Expertise, France.

The Respondent is Pandi Panda, France.

2. The Domain Name and Registrar

The disputed domain name <e-leclerc-arcycom.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 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 March 14, 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 the Respondent of the Complaint, and the proceedings commenced on March 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 20, 2023.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on April 25, 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

The Complainant is a French association, Association des centres distributeurs e. Leclerc – ACD Lec. “Leclerc” refers to the last name of the founder and promoter of the association – Mr. Edouard Leclerc.

The Complainant owns several trademarks for E LECLERC and notably:

- the European Union trademark E LECLERC No. 002700664 filed on May 17, 2002, and registered on January 31, 2005, and duly renewed since then;
- the European Union trademark E.LECLERC No. 011440807 filed on December 5, 2012, and registered on May 27, 2013. No renewal certificate is provided.

The Complainant operates one of the most renowned chain of supermarkets and hypermarkets stores in France. The Complainant has about 721 stores in France, located all over the country.

The Complainant’s chain of stores and the E LECLERC trademarks are well known in France and also in several other European countries.

The disputed domain name <e-leclerc-arcycom.com> was registered on May 9, 2022. It is pointing to a default page indicating that it has been reserved and a Mail Exchange (“MX”) server has been set up.

The Respondent’s name is “Pandi Panda”, located in Toulouse.

5. Parties’ Contentions

A. Complainant

Identity or confusing similarity

The Complainant’s contentions can be summarized as follows:

The Complainant contends that the denomination “E Leclerc” has no meaning in French or English and is highly distinctive. The addition of the name “arcycom” within the disputed domain name does not lessen the likelihood of confusion between the disputed domain name and the Complainant’s trademarks. On the contrary, the association of the well-known trademark E LECLERC with the term “arcycom”, which directly refers to the French company Arcycom, incorporated in 2009, and which belongs to the Complainant’s organization. Indeed, the company ARCYCOM runs a E LECLERC supermarket located in Bois d’Arcy, France.

In view of the above, the disputed domain name registered by the Respondent shall be considered as confusingly similar to the Complainant’s trademark E LECLERC.

Lack of rights or legitimate interests

Moreover, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Indeed, 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. There is no business relationship existing between the Complainant and the

Respondent. The Respondent's disputed domain name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate noncommercial fair use.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. Besides, according to the information relating to the Respondent (if accurate), the Respondent lives in France and cannot be unaware of the existence and reputation of the Complainant's trademarks and activities under the name. The reservation of a domain name reproducing in the identical way the denomination and trademark E LECLERC, associated with the term "arcycom" cannot be in any case a coincidence and clearly demonstrates that the Respondent was perfectly aware of the Complainant's trademarks and business.

Because of the strong public awareness of the Complainant's trademarks, any attempt to actively use the disputed domain name again would inevitably lead to a likelihood of confusion to the source, sponsorship, affiliation, or endorsement of the Respondent website among Internet users who would inevitably be led to believe that such website would be owned by, controlled by, established by or in some way associated with the Complainant.

Finally, the Respondent's concealment of its identity is also indicative of bad faith.

According to the information provided by the Registrar and communicated by the WIPO Arbitration and Mediation Center on March 13, 2023, the disputed domain name was registered in the name of "Pandi Panda" which refers to a famous character and a song from the universe of Chantal Goya, a French singer, having written songs for children. Given the information above, the Complainant has every reason to believe that the Respondent gave a false and fanciful name when registering the disputed domain name in order to keep its identity anonymous.

The disputed domain name is used in bad faith

The Complainant tried to resolve this matter amicably, by sending a letter to the Respondent.

The disputed domain name is, since its detection, pointing to a default page indicating that it has been reserved.

Besides, the Complainants contends that the MX servers are still configured to operate with the disputed domain name. The existence of these MX servers leads to believe that the Respondent could use the MX servers for phishing purposes by sending fraudulent emails.

The disputed domain name disrupts the Complainant's business and harms the Complainant's brand image.

The Internet Users and especially the Complainant's customers may wrongly believe that the websites to which they resolves are the Complainant's site or that the Complainant's website is not correctly functioning or has been hacked.

For all the foregoing reasons, the Complainant is in position to state that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has proved that it has a prior right on its European Union trademark E LECLERC No. 002700664 filed on May 17, 2002, registered on January 31, 2005 in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and duly renewed.

It has not justified that the European Union trademark E LECLERC No. 011440807 filed on December 5, 2012 and registered on May 27, 2013 has been renewed.

The disputed domain name incorporates the E LECLERC trademark, which is composed with the family name of Edouard Leclerc, founder of the Complainant.

The E LECLERC trademark is well known in France.

The disputed domain name only differs from the E LECLERC trademark by the addition of the term "arcom" which is the name of one of its companies.

Any addition does not prevent a finding of confusing similarity as long as the trademark remains recognizable, what is the case.

Thus, the disputed domain name is confusingly similar to the E LECLERC trademark.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

B. Rights or Legitimate Interests

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 it of the dispute, the Respondent's use of, or 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 it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial 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.

The Complainant asserts that the Respondent is not related in any way with the Complainant.

There is no indication that the Respondent is commonly known by the disputed domain name.

There is no evidence of any *bona fide* use of the disputed domain name.

The Respondent did not either answer the email that was sent to him, nor respond to the Complainant to

rebut its *prima facie* case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect to the disputed domain name, which was not rebutted by the Respondent.

Moreover, considering the reputation of the E LECLERC trademark and the composition of the disputed domain name, the Panel finds the nature of the disputed domain name carries a risk of implied affiliation to the Complainant, which renders any fair use unlikely.

The Panel concludes that the Complainant has established that the Respondent does not have any rights or legitimate interests in the disputed domain name, within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a panel to be evidence of bad faith registration and use of the disputed domain name.

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that a respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Given the Complainant's reputation, it is reasonable to assume that the Respondent, who is reportedly located in France, was well aware of the E LECLERC trademark when it registered the disputed domain name.

It chose to add the term "arcycom," in reference to the name of a company of the Complainant's organization, to the E LECLERC trademark when it registered the disputed domain name, to target the Complainant.

This can of course not be a coincidence.

Even if the disputed domain name does not resolve to an active website, it is proven that the Respondent recorded MX servers, in order to be able to create emails composed with the E LECLERC trademark and to use these email addresses to send emails, with the likely purpose to impersonate the Complainant.

While the disputed domain name may not have been actively been used for emails yet, the non-use of the disputed domain name does not prevent a finding of bad faith. Pursuant to section 3.3 of the [WIPO](#)

[Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#), panels should weigh the totality of the circumstances when assessing the passive holding doctrine. Here, noting the distinctive and well-known nature of the E LECLERC trademark, the additional term in the composition of the disputed domain name referring to the French company Arcycom, which belongs to the Complainant's organization, the Respondent's failure to participate in this proceeding, and the Respondent's provision of false contact details when registering the disputed domain name, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith.

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) and 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, <e-leclerc-arcycom.com>, be transferred to the Complainant

/Marie-Emmanuelle Haas/

Marie-Emmanuelle Haas

Sole Panelist

Date: May 9, 2023