

## ADMINISTRATIVE PANEL DECISION

L'Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Name Redacted

Case No. D2024-2988

### 1. The Parties

The Complainant is l'Association des Centres Distributeurs E. Leclerc - A.C.D. 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 <e-leclerc-achat.shop> is registered with Gandi SAS (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 23, 2024. On July 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 24, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On July 26, 2024, the Center informed the parties in English and French, that the language of the registration agreement for the disputed domain name is English. On July 29, 2024, the Complainant confirmed its request that French be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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<sup>1</sup> The Respondent appears to have used the name and/or contact details 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case.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 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent’s default on August 27, 2024.

The Center appointed Daniel Kraus as the sole panelist in this matter on September 11, 2024. 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 named after its founder and promoter, Mr. Edouard Leclerc. Presently, the Complainant counts with 735 supermarkets in France, with a share of around 23% of the French market (2023 numbers).

The Complainant is the owner of the following, amongst others, trademark registrations (Annex 4 to the Complaint):

- European Union trademark registration No. 002700664 for the word mark E LECLERC, filed on May 17, 2002, registered on January 31, 2005, subsequently renewed, in all classes; and
- European Union trademark registration No. 011440807 for the word and device mark E.LECLERC, filed on December 5, 2012, registered on May 27, 2013, subsequently renewed, in all classes.

The disputed domain name, <e-leclerc-achat.shop> was registered on May 4, 2024 and at the time of filing and presently does not resolve to an active webpage.

#### **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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant’s E LECLERC well-known trademark which is clearly recognizable within the disputed domain name, and the addition of the generic term “achat” (“purchase” in French – and related to the Complainant’s field of activities) is not capable of avoiding any risk of confusion.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

1. The disputed domain name has been registered anonymously;
2. the Respondent is not named nor commonly known by the disputed domain name, or holder of any rights over the name and trademark E LECLERC;

3. the Respondent has not been authorized, licensed, or permitted to use any of the Complainant's trademarks or to apply for or use of any domain name incorporating the Complainant's trademarks; and
4. the Respondent is not using the disputed domain name in connection with any legitimate non-commercial or fair use without intent for commercial gain.

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that the Complainant's trademark is a well-known trademark in France and several other European countries, having the Respondent clearly targeted the Complainant when registering the disputed domain name as the addition of the term "achat" directly refers to the Complainant's activities and any use of the disputed domain name inevitably leads to a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the disputed domain name with the Complainant. In addition to that, both the present inactive use of the disputed domain name as well as providing false contact details when registering the disputed domain name are further indicatives of the Respondents' bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Language of the Decision**

The language of the Registration Agreement for the disputed domain name is English. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in French. The Complainant requested that the language of the proceeding be French for several reasons, including the fact the Respondent lives in the Ivory Coast, a French speaking country.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, but also considering practical issues such as the existence of precedents regarding the same Complainant in English, and the fact that the Respondent has not replied to the Complaint, the Panel determines under paragraph 11(a) of the Rules that the language of the decision shall be English.

### **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 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 that the Complainant's mark is recognizable 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.

While the addition of other terms/elements (“achat” and “-”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms/elements 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 non-exclusive list of circumstances that may indicate the Respondent’s rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired 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.

The Respondent, in choosing not to respond, has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden is still on the Complainant to first make a prima facie case against the Respondent (being the overall burden of proof always with the Complainant, but once the 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).

In that sense, the Complainant indeed states that the Respondent has not been authorized, licensed or permitted to use any of the Complainant’s trademarks or to apply for or use of any domain names incorporating the Complainant’s trademarks.

Also, the absence of any indication that the Respondent holds rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name that could be inferred from the details known of the Respondent or the webpage available at the disputed domain name, corroborate with the Panel’s finding of the absence of rights or legitimate interests.

Therefore, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name. The second element of the Policy has also been met.

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

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

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the Complainant is a long-established association, its name and registered trademark being well-known;
- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- c) and the Respondent provided contact information that appears to be false so that the Center was unable to fully deliver the Written Notice to the Respondent.

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

Considering the circumstances in this case, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

## **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-achat.shop> be transferred to the Complainant.

*/Daniel Kraus/*

**Daniel Kraus**

Sole Panelist

Date: September 25, 2024