

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - ACD Lec v. Kitchi Kitchi Case No. D2022-3962

1. The Parties

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

Respondent is Kitchi Kitchi, China.

2. The Domain Names and Registrar

The Disputed Domain Names <lecclerc.com> and <lecclerc.xyz> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 21, 2022. On October 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On October 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names 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 Complainant on November 3, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 4, 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 Respondent of the Complaint, and the proceedings commenced on November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on November 29, 2022.

The Center appointed Richard W. Page as the sole panelist in this matter on December 8, 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.

Upon review of the file, the Panel grants Complainant's request for consolidation.

4. Factual Background

Complainant is a French association, ADC Lec (Association des Centres Distributeurs E. LeClerc) ("LeClerc") which refers to the family name of the founder and promoter of the association - Mr. Edouard Leclerc.

Complainant owns several trademarks (the "LECLERC Marks"), notably the European Union Trade Mark "LECLERC" No. 00270056 filed on May 17, 2002, and registered on February 26, 2004, in Classes 1-45.

The Disputed Domain Names were registered June 27, 2022. The LECLERC Marks were filed and registered prior to the registration of the Disputed Domain Names. The Disputed Domain Name <lecclerc.com> linked at some point in time to an apparently fraudulent online sales website (entitled "LECCLEERC BODY CARE EXPERT"). The disputed domain name <lecclerc.xyz> leads to an inactive page. Currently both Disputed Domain Names are inactive.

Complainant is one of the most renowned chains of supermarkets and hypermarket stores in France. Complainant owns about 721 stores in France, located all over the country. Complainant's chain of stores and the LECLERC Marks are well known in France and also in several other European countries.

5. Parties' Contentions

A. Complainant

Pursuant to paragraph 4(a)(i) of the Policy, Complainant contends that the Disputed Domain Names are confusingly similar to the LECLERC Marks. Complainant further contends that the Disputed Domain Names are composed of the term "lecclerc" which is very similar to the LECLERC Marks. The only difference is the presence of a double letter "c" within the Disputed Domain Names. The double "c" can also be seen as a typo likely to cause confusion.

Complainant further contends that Respondent's typosquatting by definition renders the Disputed Domain Names confusingly similar to the LECLERC Marks. Complainant further contends that the name "LECLERC" has no meaning in French or English and is highly distinctive.

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Names, pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further asserts that it became aware of the registration of the Disputed Domain Names made on June 27, 2022.

Complainant further asserts that, initially, the Disputed Domain Name <lecclerc.com> led to an alleged online store which seemed fraudulent because the presentation of the website was odd. The website was devoid of any real offer of goods as the items were named "example product title" and the product sections ("homeware" and "car accessories") were empty. The Company, mentioned under the "terms and services," lecclerc Ltd., did not seem to exist.

Complainant further asserts that the website to which the Disputed Domain Names resolved was fraudulent and could be used in order to trick Internet Users and collect sensitive data from them, including bank information.

Complainant further asserts that its representative (the French law firm INLEX IP EXPERTISE) sent a letter to the Registrar and to the website host on August 11, 2022, in order to inform them and for the suspension and deletion of the Disputed Domain Names and the associated website.

Complainant further asserts that, on August 12, 2022, the website servers host responded positively and deactivated the website. The Disputed Domain Name <lecclerc.com> then led to an error page and now leads to a blocked fraudulent page. The Disputed Domain Name <lecclerc.xyz> points to an inactive page.

Complainant further asserts that Respondent has no link of any nature to Complainant, does not seem to have legitimate interests or rights in the registration and in the use of the Disputed Domain Names. The Disputed Domain Names are neither used in connection with a *bona fide* offering of goods and/or services nor constitute a legitimate non-commercial fair use. Complainant further asserts that Respondent has not made a *bona fide* offering of goods or services.

Complainant further asserts that the content of the associated websites or the WHOIS database details do not indicate that: Respondent is commonly known by the name LECLERC; Respondent is linked to any official registered company named LECLERC; and Respondent has no rights, including trademark rights, in the name LECLERC.

Complainant further asserts that Respondent has not been authorized by Complainant to use the LECLERC Marks and there is no business relationship existing between Complainant and Respondent.

Complainant alleges that Respondent registered and used the Disputed Domain Names in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Complainant further alleges that almost 70 years after the opening of its first LECLERC store in France, Complainant has become the first European organization of independent storekeepers. The term LECLERC is immediately associated, at least in the mind of French consumers, with Complainant and with the LECLERC Marks.

Complainant notes that the supermarkets/hypermarkets LECLERC also enjoy a reputation in several other European countries where Complainant does business, such as Poland, Spain, Portugal, Andorra, and Slovenia.

Complainant further notes that there are 721 LECLERC stores in France and around 100 in the other European countries where Complainant does business. With more than a twenty percent (20%) market share on all products, Complainant is the leader of the large-scale distribution in France. In 2019, the turnover of Complainant was EUR 48.20 billion in France. Complainant employs approximately 133,000 people. The reputation of the LECLERC Marks has been recognized in several decisions issued by UDRP Panels.

Complainant further alleges that Respondent has actual and imputed knowledge of the LECLERC Marks, which have been well-known for many years and enjoy a great reputation notably in France.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Names registered by Respondent are identical or confusingly similar to the LECLERC Marks in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- iii) that the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that it owns several trademarks (the “LECLERC Marks”), notably the European Union Trade Mark “LECLERC’ No. 00270056 filed on May 17, 2002, and registered on February 26, 2004 in Classes 1-45. Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the LECLERC Marks.

Respondent has not contested Complainant’s contention. Therefore, the Panel finds that Complainant has enforceable rights in the LECLERC Marks.

Complainant further contends that the Disputed Domain Names are identical with and confusingly similar to the LECLERC Marks, pursuant to paragraph 4(a)(i) of the Policy.

See Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Also see Section 1.9 of the [WIPO Overview 3.0](#) instructs that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.. Also see Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that generic Top-Level Domains (“gTLDs”) such as “.com” and “.xyz” may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the LECLERC Marks can be recognized within the Disputed Domain Names and that the double “c” typo cannot prevent the confusing similarity between the Disputed Domain Names and the Complainant’s mark. Furthermore, the gTLDs are a technical element and may be disregarded for purposes of assessing confusing similarity.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant contends that Respondent has no rights or legitimate interest in the Disputed Domain Names pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it

has rights or legitimate interests in the Disputed Domain Names. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Names:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Names or a name corresponding to the Disputed Domain Names in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Names, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 LECLERC Marks at issue.

Complainant asserts that, on August 12, 2022, the website servers host responded positively and deactivated the website because of its fraudulent content. The Disputed Domain Name <lecclerc.com> then led to an error page and now leads to a blocked fraudulent page. The Disputed Domain Name <lecclerc.xyz> points to an inactive page.

Complainant further asserts that Respondent's activities do not constitute a *bona fide* offering of goods and/or services nor a legitimate non-commercial fair use.

Complainant further asserts that neither the content of the associated websites nor the WHOIS database details indicate that: Respondent is commonly known by the name LECLERC; Respondent is linked to any official registered company named LECLERC; or Respondent has rights, including trademark rights, in the name LECLERC.

Complainant further asserts that Respondent has not been authorized by Complainant to use the LECLERC Marks and there is no business relationship existing between Complainant and Respondent.

The Panel finds that these assertions constitute a *prima facie* showing that Respondent has no rights or legitimate interests in the Disputed Domain Names. Respondent has not contested these assertions.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant contends that Respondent registered and is using the Disputed Domain Names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Names:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names registration to Complainant who is the owner of the LECLERC Marks or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Names; or
- (ii) you [Respondent] have registered the Disputed Domain Names in order to prevent the owner of the LECLERC Marks from reflecting the trademarks in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Names, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the LECLERC Marks as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on Respondent's website or location.

The four criteria set forth in paragraph 4(b) of the Policy are nonexclusive. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("Telstra"). In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

The Panel finds that Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the LECLERC Marks, satisfying the requirements of paragraph 4(b)(iv) of the Policy. The Panel also finds that Respondent had actual and constructive knowledge of Complainant's rights in the LECLERC Marks when it registered the Disputed Domain Names. See section 3.2.2 of [WIPO Overview 3.0](#). Panel also finds that Respondent was typosquatting. See section 1.9 of the [WIPO Overview 3.0](#).

The Panel finds that Complainant has satisfied the requirements of 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 Names, <lecclerc.com> and <lecclerc.xyz>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: December 20, 2022