

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – ACD Lec v. wang li ping, 施谷丝 (Pergrem kelly), 范海瑶 (Pergrem kelly), 苏绿海 (Pergrem kelly), 华小夏 (Pergrem kelly)
Case No. D2023-5211

1. The Parties

Complainant is Association des Centres Distributeurs E. Leclerc – ACD Lec, France, represented by MIIP MADE IN IP, France.

Respondents are wang li ping, China, 施谷丝 (Pergrem kelly), United States of America (“USA”), 范海瑶 (Pergrem kelly), USA, 苏绿海 (Pergrem kelly), USA, and 华小夏 (Pergrem kelly), USA.

2. The Domain Names and Registrars

The disputed domain names <eleclercbigsale.com>, <eleclercoffers.com>, <eleclercofficial.com>, <eleclercsale.shop> are registered with West263 International Limited (the “First Registrar”); the disputed domain name <eleclercsales.shop> is registered with Hostinger Operations, UAB (the “Second Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2023. On December 14, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On December 15, 2023, the Second 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, Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. On December 18, 2023, the First 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, Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on December 18, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on December 19, 2023.

On January 31, 2023, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On February 1, 2024, Complainant requested English to be the language of the proceeding. Respondents did not submit any comment on Complainant's submission.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. Respondents did not submit any response. Accordingly, the Center notified Respondents' default on January 24, 2023. On January 31, 2023, Respondents were granted five extra days for submitting the Response until February 5, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on February 14, 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

A. Complainant

Complainant, Association des Centres Distributeurs E. Leclerc – ACD Lec, is an association incorporated in France. "E Leclerc" stems from the surname of the association's founder, Mr. Edouard Leclerc, and is renowned as one of France's leading supermarket and hypermarket chains. With approximately 735 stores spread nationwide, Complainant's chain and E LECLERC trademarks are widely recognised in France and across several European countries.

Complainant has rights in the E LECLERC related marks. Complainant is the owner of numerous E LECLERC trademarks worldwide, including the European Union ("EU") trademark registration for E LECLERC, registered on January 31, 2005 (registration number: 002700664); and the EU trademark registration for E.LECLERC, registered on May 27, 2013 (registration number: 011440807) (Annex 4 to the Complaint).

B. Respondents

Respondents are wang li ping, China, 施谷丝 (Pergrem kelly), USA, 范海瑶 (Pergrem kelly), USA, 苏绿海 (Pergrem kelly), USA, and 华小夏 (Pergrem kelly), USA.

- The disputed domain name <eleclercsales.shop> was registered (with Hostinger Operations, UAB) by wang li ping, China, on November 10, 2023.
- The disputed domain name <eleclercofficial.com> was registered (with West263 International Limited) by 施谷丝 (Pergrem kelly), USA, on October 13, 2023.
- The disputed domain name <eleclercbigsale.com> was registered (with West263 International Limited) by 范海瑶 (Pergrem kelly), USA, on November 3, 2023.
- The disputed domain name <eleclercoffers.com> was registered (with West263 International Limited) by 苏绿海 (Pergrem kelly), USA, on November 28, 2023.
- The disputed domain name <eleclercsale.shop> was registered (with West263 International Limited) by 华小夏 (Pergrem kelly), USA, on November 3, 2023.

The disputed domain names <eleclercofficial.com>, <eleclercbigsale.com>, <eleclercsales.shop>, and <eleclercoffers.com> (four out of the five disputed domain names) were originally directing users to fraudulent websites in the English language. These websites replicated Complainant's E LECLERC trademarks and logo, purportedly selling Complainant's products with unauthorised discounts. The disputed domain name <eleclercsale.shop> led to an inactive webpage (passive held) (Annex 6 to the Complaint).

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain names exactly replicate the trademarks E LECLERC, which hold distinctive significance with no apparent meaning in French or English. Despite the addition of generic English terms like "official", "big sale", "sales", "offers", and "sale", the likelihood of confusion remains high. These terms directly reference Complainant's activities or are commonly used in business, thereby increasing the potential for confusion with Complainant's trademarks.

Complainant contends that Respondents lack rights or legitimate interests in the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

B. Respondents

Respondents did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreements for the disputed domain name <eleclercsales.shop> is English. The language of the Registration Agreements for all other disputed domain names is Chinese. 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.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondents to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) Complainant cannot communicate in Chinese or Cantonese, avoiding the burden and delay of translation.
- (b) English serves as the second official language of Hong Kong, China, where the registrar West263 International Limited is located, indicating Respondents' likely understanding and communication ability in English.
- (c) The disputed domain names use Latin characters and ".com" and ".shop" generic Top-Level Domain ("gTLD"), rather than Chinese characters.
- (d) Except for <eleclercsale.shop>, all disputed domain names include English generic terms and initially directed users to English pages, suggesting Respondents' proficiency in English.

(e) Given Complainant's French location and Respondents' use of privacy/proxy registration services, English is deemed the fairest language for the proceedings.

(f) English remains the most widely used language in international relations.

Respondents did not make any specific submissions with respect to the language of the proceeding.

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).

On the record, Respondents, 施谷丝 (Pergrem kelly), 范海瑶 (Pergrem kelly), 苏绿海 (Pergrem kelly), and 华小夏 (Pergrem kelly), appear to be located in the USA and are thus presumably English speakers; and considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly containing English terms (e.g. "official", "big sale", "sales", "offers", and "sale"), rather than Chinese script; (b) the gTLD of the disputed domain names are ".com", and ".shop", so the disputed domain names seem to be prepared for users worldwide, particularly English speaking countries; (c) the webpages, which the disputed domain names <eleclercofficial.com>, <eleclercbigsale.com>, <eleclercsales.shop>, and <eleclercoffers.com> (four out of the five disputed domain names) resolved to, were in the English language; (d) the Center has notified Respondents of the language of the proceeding in both Chinese and English, and Respondents have indicated no objection to Complainant's request that English be the language of the proceeding

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

As regards common control, the Panel finds that Complainant has provided sufficient evidence to establish that the disputed domain names or corresponding websites are subject to common control, for the following reasons:

(a) All disputed domain names, except <eleclercsale.shop>, used to resolve similar fraudulent webpages (see Annex 6 to the Complaint).

(b) All disputed domain names share a common structure linking the E LECLERC trademark with English generic terms like "official", "big sale", "sales", "offers", and "sale", commonly used in supermarket/hypermarket contexts or commercial activities, which are Complainant's fields of activities.

(c) The registration dates of all disputed domain names were very close, occurring in October and November of 2023.

(d) Except for <eleclercsales.shop>, all other disputed domain names were registered with West263 International Limited, and used the same postal address but have different email addresses.

(e) All disputed domain names, except for <eleclercsales.shop>, are registered under the same English name, “Pergrem Kelly”, despite being associated with different Chinese names.

(f) Nevertheless, based on the information provided by the Complaint, <eleclercsales.shop> previously resolved to the similar fraudulent webpage as the disputed domain names <eleclercofficial.com>, <eleclercbigsale.com>, and <eleclercoffers.com>, indicating a lack of coincidence (Note: the webpage resolved by “eleclercsale.shop” is inactive) (Annex 6 to the Complaint).

As regards fairness and equity, the Panel sees no reason why consolidation of the disputed domain names would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “Respondent”) in a single proceeding.

6.3 Substantive Issues: Three Elements

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 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 the entirety of the E LECLERC mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms “official”, “bigsale”, “sales”, “offers”, and “sale” may bear on the assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a 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 to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

More specifically:

- (i) there has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "eleclerc", Complainant's E LECLERC trademark, in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the E LECLERC or E.LECLERC marks or to apply for or use any domain name incorporating the E LECLERC marks;
- (ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2023, long after the E LECLERC marks (registered as a trademark since 2005) became widely known. The disputed domain names are confusingly similar to Complainant's E LECLERC marks; and
- (iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. By contrast, all active disputed domain names (four of five disputed domain names) resolved to websites purporting to be authorised online stores for Complainant's products, and the websites were in the English language, contain the contents copied from the original website of Complainant, and purport to offer Complainant's goods for sale at extreme discounts. It seems that Respondent is making profits through the Internet traffic attracted to the websites under the disputed domain names. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁* (Li Jin Liang), WIPO Case No. [D2020-3358](#).)

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent has registered and used the disputed domain names in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Regarding inactive disputed domain name, UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name <eleclercsale.shop> (Annex 6 to the Complaint) does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that

have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's trademark, and the composition of the disputed domain name <eleclercsale.shop>, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Regarding the active disputed domain names, UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registrations and use of the disputed domain names constitute bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the E LECLERC marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain names (in 2023). This has been reinforced by the fact that each disputed domain name incorporates Complainant's E LECLERC trademark.

Respondent has used the websites resolved by active disputed domain names for displaying the contents copied from the original website of Complainant, and purports to offer Complainant's goods for sale at extreme discounts.

Thus, the Panel concludes that Respondent is currently using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

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

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 <eleclercbigsale.com>, <eleclercoffers.com>, <eleclercofficial.com>, <eleclercsale.shop>, and <eleclercsales.shop> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: March 27, 2024