

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - A.C.D. Lec. v. Franck mollet, Temple Otouyer
Case No. D2023-5398

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - A.C.D. Lec., France, represented by MIIP MADE IN IP, France.

The Respondents are Franck mollet, France, and Temple Otouyer, Côte d'Ivoire.

2. The Domain Names and Registrar

The disputed domain names <e-leclerc-achat.com> and <eleclerc-achat.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 2, 2024, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on January 8, 2024.

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 Respondents of the Complaint, and the proceedings commenced on January 11, 2024. In accordance with the Rules, paragraph

5, the due date for Response was January 31, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on February 1, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on February 5, 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, as well as stores in Poland, Portugal, Slovenia and Spain, having had a turnover of EUR 55.6 billion in 2022 in France, and counting with approximately 140,000 employees.

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 names, <e-leclerc-achat.com> and <eleclerc-achat.com>, were registered on November 10, 2023, and November 15, 2023, respectively, and at the time of filing and presently do not resolve to active webpages.

In the past, the disputed domain names resolved to parked webpages displaying "pay-per-click" ("PPC") links and had Mail Exchange ("MX") servers configured to them. On November 22, 2023, the Complainant's representative sent notices to the Registrar requesting the deactivation of the MX servers and websites.

5. Parties' Contentions

A. Complainant

The Complainant requests the consolidation of the disputed domain names in a single procedure given that the disputed domain names appear to be at least under common control given that: the disputed domain names: i. share a similar naming pattern, only differing by a "-"; ii. were registered via the same Registrar; iii. were registered within a short period of time; iv. had the same MX servers configured to them; and v. resolved to identical webpages displaying PPC links.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's E LECLERC well-known trademark which is clearly recognizable within the disputed domain names, and the addition of the generic term "achats" ("purchases" in French – and related to the Complainant's field of activities) and of "-" symbol is not capable of avoiding any risk of confusion.

Moreover, the Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names given that:

- a. the Respondents are not named nor commonly known by the disputed domain names, or holder of any rights over the name and trademark E LECLERC;
- b. the Respondents have 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;
- c. the Respondents are not using the disputed domain names in connection with any legitimate noncommercial or fair use without intent for commercial gain; and
- d. the same mail servers have been configured in relation to the disputed domain names in a risk of fraudulent use such as phishing.

As to the registration and use of the disputed domain names 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 Respondents clearly targeted the Complainant when registering the disputed domain names as the addition of the term "achats" directly refers to the Complainant's activities and any use of the disputed domain names inevitably lead to a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the disputed domain names with the Complainant. In addition to that, the past configuration of the same MX servers in connection with the disputed domain names characterize a high risk of fraudulent use of the disputed domain names by the Respondents. Lastly, both the present inactive use of the disputed domain names as well as the Respondents' choice to retain a privacy protection service are further indicatives of the Respondents' bad faith.

B. Respondents

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain names.

A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The 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 the 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 the 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that both disputed domain names were registered within a relative short period of time, through the same Registrar, using the same privacy service provider and sharing the same MX servers, also having resolved to identical webpages displaying PCC links and finally no objection was made by the Respondents regarding consolidation.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes 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 “the Respondent”) in a single proceeding.

B. 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 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/elements (“achats” 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 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.

C. 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 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 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 names. 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 names, or any possible link between the Respondent and the disputed domain names that could be inferred from the details known of the Respondent or the webpage available at the disputed domain names, 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 names. 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.

D. 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 names:

- a) the Complainant is a long-established association, being its name and registered trademark well-known;
- b) the potential use of the disputed domain names in connection with fraudulent emails;
- c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names;
- d) the Respondent's choice to retain a privacy protection service; and
- e) the indication of what appear to be wrong or incomplete contact details, not having the Center fully been able to 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 names 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 names.

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 <e-leclerc-achat.com> and <eleclerc-achat.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: February 19, 2024