

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. maxime michelet, sodicharcentreleclerc
Case No. D2024-2441

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 Respondent is maxime michelet, sodicharcentreleclerc, France.

2. The Domain Name and Registrar

The disputed domain name <sodichar-centreleclerc.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 2024, 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 June 19, 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 Respondent of the Complaint, and the proceedings commenced on June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed William Lobelson as the sole panelist in this matter on July 22, 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 Association des Centres Distributeurs E. Leclerc – A.C.D. Lec, and runs a nationwide chain of supermarkets in France.

The Complainant owns trademark rights in the name “Leclerc”, such as:

- European Union Trademark LECLERC Registration No. 002700656 filed on May 17, 2002 and registered on February 26, 2004, and duly renewed since then;
- French trademark LECLERC Registration No. 1307790 filed and registered on May 2, 1985, and duly renewed since then.

Among the Complainant’s affiliated companies is a French corporation named SODICHAR, that exploits a supermarket E LECLERC in Barjouville (France).

The disputed domain name <sodichar-centreleclerc.com> was registered on March 30, 2024. It does not resolve to any active web page and Mail Exchange (MX) servers were set up.

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 its earlier trademarks, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

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 Complainant is the owner of trademark registrations for LECLERC.

The disputed domain name reproduces the Complainant's trademark LECLERC.

Although the addition of other terms, here "Sodichar" and "Centre" may bear on 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel notes that the name SODICHAR corresponds to the corporate name of a company that is affiliated with the Complainant, and that exploits an E LECLERC supermarket.

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Consequently, the disputed domain name is confusingly similar to the Complainant's trademark and the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

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.

- (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 and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant further contends that the Respondent does not make any bona fide use - neither commercial nor noncommercial, of the disputed domain name.

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 the Complainant claims that the Respondent has registered the disputed domain name and uses the same in bad faith, even though the said domain name does not resolve towards any active webpage.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, such as the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (which constitutes passive holding), does not as such prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the respondent's concealment of its identity. UDRP panels may draw inferences about whether a domain name was used in bad faith given the circumstances surrounding the registration.

The Complainant has substantiated the fact that its trademark LECLERC, which has been registered and used in France for years, now benefits from a high level of public awareness. Earlier UDRP decisions have acknowledged the Complainant's trademarks reputation.

Further the disputed domain name was registered using a privacy service filed anonymously, but when the identity of the Respondent was disclosed by the Registrar, it was confirmed that this individual was based in France.

The fact that the Respondent used a French address implies that he is a French resident or at least has connections with France, where the Complainant's mark is very well known.

It is also observed that the Respondent added to his own name, in the Whois record, the name of an organization, namely "sodicharcentreleclerc", that happens to coincide with the Complainant's trade name CENTRE LECLERC, combined with the name of its affiliate SODICHAR. This is to be regarded as a fraudulent impersonation of the Complainant, as well as an attempt to justify the illegitimate registration of the disputed domain name.

In light of the above, this Panel finds hard to believe that the Respondent did not have the Complainant's trademark in mind when he registered the disputed domain name.

Regarding the high similarity of the disputed domain name with the Complainant's trademark LECLERC and the company name of its affiliate SODICHAR, it is highly unlikely that the disputed domain name could have been registered and then used in good faith.

The Panel also notes that the Respondent did not reply to the Complaint.

The Panel infers from the above that the Respondent acted in bad faith when he registered the disputed domain name, and still acts in bad faith.

The disputed domain name is currently not directed to any active web page.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"From the inception of the UDRP, panelists 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. 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."

Such passive holding is to be regarded as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

Further, the Complainant has filed evidence showing that the Respondent had set up MX servers in relation with the disputed domain name, thus revealing a possible intention to use the same as an email address.

Although no evidence of fraudulent acts has been brought in support of the present proceedings, the Panel is not unaware of the common practice whereby hackers register domain names consisting of well-known brand names or company names, in order to use email addresses imitating the same, with the aim of engaging in acts of deception and extortion of Internet users.

The creation of an email address - based on the disputed domain name - that could lead the recipient of a message sent from this address to believe that it is from the Complainant would constitute bad faith use of the disputed domain name (See *Credit Industriel et Commercial S.A. v. Zabor Mok*, WIPO Case No. [D2015-1432](#)).

Based on the available record, the Panel finds that the Complainant has established the third element 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 <sodichar-centreleclerc.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: August 5, 2024