

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - ACD Lec v. Tony Yeap Ka Chun

Case No. D2024-5268

1. The Parties

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

The Respondent is Tony Yeap Ka Chun, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <eleclerc.live> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2024. On December 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 23, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 December 26, 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 December 26, 2024.

The Center verified that the Complaint together with the amendment to 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 January 7, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 27, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 28, 2025. The Respondent sent an email communication on February 3, 2025.

The Center appointed Gregor Vos as the sole panelist in this matter on February 3, 2025. 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 was founded in 1949 and operates a chain of supermarket stores in France. The Complainant has around 750 stores in France and around 100 stores in other countries in the European Union ("EU"), such as Poland, Spain, Portugal and Slovenia.

The Complainant is the owner of inter alia the following trademark registrations (hereinafter jointly referred to as: the "Trademarks"):

- EU Trade Mark registration No. 002700664 for E LECLERC registered on January 31, 2005; and

- EU Trade Mark registration No. 011440807 for  registered on May 27, 2013.

The Domain Name was registered on September 13, 2024. Currently and at the time of filing the Complaint, the Domain Name resolved to a webpage on which an error message is displayed.

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 Domain Name.

Notably, the Complainant contends that the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is identical to its well-known Trademarks. The Domain Name incorporates the Trademarks in their entirety with the mere addition of the generic Top-Level Domain ("gTLD") ".live", which is viewed as a standard registration requirement and as such is disregarded under the confusing similarity test.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received a license or any other form of authorization from the Complainant to use the Trademarks, has no prior rights to the Domain Name and is not commonly known by the Domain Name. Also, the Domain Name resolved to an error page and MX servers are set up on it. According to the Complainant, this use cannot be considered as a bona fide offering of goods or services or a legitimate non-commercial fair use.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainant and its Trademarks and the registration and use of the Domain Name consequently qualifies as opportunistic bad faith. Additionally, according to the Complainant, the Domain Name is being used in bad faith. The fact that the Domain Name points to an error page and that MX servers are set up on it, leads to believe that the Respondent could use the Domain Name for phishing purposes, which constitutes bad faith. Also, the Domain Name disrupts the Complainant's business and causes harm to the Complainant's brand image.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions. On February 3, 2025, after the Center notified the Respondent's default, the Respondent sent an email communication stating: "that domain is removed from name cheap right ? what should i do ?"

6. Discussion and Findings

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

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 Trademarks and the 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 entirety of the word elements E LECLERC of the Trademarks is reproduced within the Domain Name. Accordingly, the Domain Name is identical to the Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel also considers that the composition of the Domain Name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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.

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.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the reputation of the Complainant and its Trademarks, the Panel finds that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The reputation of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see e.g. *Association des Centres Distributeurs E. Leclerc v. Redacted for Privacy, See PrivacyGuardian.org / postal dolly malhotra*, WIPO Case No. [D2021-0037](#)).

Further, panels have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's Trademarks, the composition of the Domain Name which is identical to the Trademarks, the absence of a response and the use of a privacy service by the Respondent, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

In the light of the reputation of the Trademarks, the lack of any rights or legitimate interests in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse of the Trademarks. This is reinforced by the strong reputation of the Complainant's Trademarks, as referenced above.

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 Domain Name <eleclerc.live> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: February 17, 2025