

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc A.C.D. Lec v. Toolz Hush,
hushbar

Case No. DCO2024-0085

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 Toolz Hush, hushbar, United States of America.

2. The Domain Name and Registrar

The disputed domain name <galec-leclerc.co> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 12, 2024. On November 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 14, 2024, 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, hushbar) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 November 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 November 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2024.

The Center appointed Michael D. Cover as the sole panelist in this matter on December 20, 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 ACD Lec (Association des Centres Distributeurs E. Leclerc. The name “LeClerc” refers to the name of the founder of the Complainant, Mr Edouard Leclerc.

The Complainant is the proprietor of several registered trademarks for LECLERC, including:

Community (EU) trademark No. 002700656 LECLERC dated May 17, 2022 in Classes 1-45;

French trademark No. 1307790 LECLERC dated May 2, 1985 in Classes 1-39.

The Complainant’s LECLERC supermarkets and hypermarkets are a well-known chain in France. The Complainant has around 750 stores in France, located all over that country. In addition, the Complainant has become the first European organization of independent shopkeepers some 70 years after the opening of the Complainant’s first LECLERC store.

There are more than 100 LECLERC stores in other European jurisdictions, including Poland, Spain, Portugal, Benelux and Slovenia. The turnover of the Complainant in 2023 was EUR 60 billion in France and the Complainant employs more than 140,000 people.

The Complainant has a website at “www.e.leclerc”.

Another French company, Societe Cooperative Groupements D’Achats des Centre LeClerc, which is part of the LeClerc organization, is in charge of negotiation of the commercial terms and conditions of the suppliers to all the LeClerc stores. This company started in 1962 and has been in existence for over 60 years. This company is the owner of French registered trademark No. 3644736 GALEC dated April 17, 2009.

All that is known about the Respondent is their name and mailing address.

The Disputed Domain Name was registered on September 16, 2024. The Disputed Domain Name was pointed to an inactive webpage and the mail exchange (“MX”) servers set up on it.

The Complainant sent what might be called a letter before action by email to the Respondent on October 21, 2024.

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.

Identical or Confusingly Similar

The Complainant submits that the Disputed Domain Name reproduces the Complainant’s trademark LECLERC and also submits that addition of the name “GALEC” does not lessen what the Complainant describes as the inevitable confusion between the Disputed Domain Name and the Complainant’s LECLERC trademark, in that the Disputed Domain Name partially corresponds to the official and registered acronym of SC GALEC, which, the Complainant says, is the other major entity running the LECLERC organization

alongside the Complainant. The Complainant concludes that the association of the Complainant's LECLERC well known trademark and the name GALEC (in the Disputed Domain Name) cannot be a coincidence. The Complainant emphasizes that neither the element of LECLERC or GALEC has a meaning in French or English and submits that these elements are therefore highly distinctive.

The Complainant notes that, in similar cases, the Panel has recognized the existence of a likelihood of confusion between the Complainant's trademarks and various domain names which associated the Complainant's LECLERC trademark with the name GALEC and cites in support *Association des Centres Distributeurs E. Leclerc, A.C.D. Lec v. huet olivier, leclerc*, WIPO Case No. [D2024-2174](#) and *Association des Centres Distributeurs E. Leclerc – A.C.D. Lec v. Name Redacted*, WIPO Case No. [D2023-5138](#).

The Complainant submits that the Disputed Domain Name identically reproduces the Complainant's trademark LECLERC and notes that prior Panels have recognized that confusing similarity is established for the purposes of the Policy, where the disputed domain name incorporates a complainant's trademark in its entirety, citing *Facebook Inc v. Global Domain Privacy Services/Evgeniy Gavonov* WIPO Case No. [DME2019-0011](#).

The Complainant goes on to submit that it is settled case law that the applicable Top-Level Domain (TLD) is to be disregarded under the confusing similarity test, as this is a standard registration requirement and that, therefore, the ".co" extension should be disregarded in analyzing the risk of confusion.

The Complainant concludes that the Disputed Domain Name should, in view of the above, be considered as confusingly similar to the Complainant's LECLERC trademark.

Rights or Legitimate Interests

The Complainant submits that the Respondent, which has no link of any nature with the Complainant, does not seem to have legitimate interest or rights in the registration and in the use of the Disputed Domain Name and then sets out the reasons for this submission, as below.

The Complainant notes that neither the website associated with the Disputed Domain Name nor the WHOIS database details indicate that the name of the Respondent is composed of the term "LECLERC" and/or "GALEC" or that the Respondent is commonly-known under the name LECLERC and/or GALEC. The Complainant notes that the Disputed Domain Name is not linked to an official registered company named LECLERC or GALEC and that, indeed, the Disputed Domain Name appears to be registered in the name of a company "hushbar", which has no link to the Complainant. The Complainant also notes that the Respondent has no rights, including trademark rights in the name LECLERC or GALEC.

The Complainant states that the Respondent has not been authorized by the Complainant to use the name LECLERC or GALEC and that there is no business relationship existing between the Complainant and the Respondent. The Complainant continues that the Disputed Domain Name is neither used in connection with a bona fide offering of goods and/or services nor does there exist a legitimate non-commercial fair use.

The Complainant concludes that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Registered and Used in Bad Faith

Under this head, the Complainant starts by stating that the Disputed Domain Name was registered in bad faith and that, for the reasons that the Complainant sets out it is unlikely that the Respondent was unaware of the Complainant's activities and the existence of the Complainant's LECLERC trademark at the time that the Disputed Domain was registered.

The Complainant goes on to state that the Complainant's supermarket and hypermarket network is well-known in France and several other European jurisdictions, including the Benelux, Poland, Portugal and

Slovenia, and that the term LECLERC is immediately associated, at least in the mind of French consumers, with the Complainant's brand LECLERC. The Complainant draws the attention to the information on the economic status of the Complainant in Annex to the Complaint and that the term "GALEC" refers to French company SC Galeb, which is one of the three main pillars of the Complainant's organization. The Complainant then states the reputation of the Complainant's LECLERC trademark has been recognized in numerous UDRP Decisions, as set out in Annex 9 to the Complaint and submits that it seems unlikely that the Respondent was unaware of the activities of the Complainant and the existence of the Complainant's LECLERC trademarks at the time of registration of the Disputed Domain Name.

The Complainant also submits that the mere fact that the Respondent registered the Disputed Domain Name, reproducing the Complainant's trademarks LECLERC and GALEC is in and of itself evidence of bad faith registration. The Complainant continues that, in any case, the registration of the Disputed Domain Name cannot be a coincidence because the Disputed Domain Name incorporates identically, as its essential distinguishing feature, the element LECLERC, which is the famous personal name of the founder of the Complainant's organization, M Edouard Leclerc, and that the word LECLERC has no meaning in French or English and is not a dictionary or common word and that there is no reasonable explanation for choosing this name. The Complainant states the Disputed Domain Name identically reproduces the GALEC trademark and almost identically the acronym SC GALEC of the other company running the LECLERC organization alongside the Complainant.

The Complainant submits that, because of the strong public awareness of the Complainant's trademarks, any attempt to actively use the Disputed Domain Name would inevitably lead to a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Respondent's website among Internet users, who would inevitably be led to believe that such website would be owned by, controlled by, established by or in some way associated with the Complainant. The Complainant also notes that the Disputed Domain Name was registered anonymously and concludes that it follows from the above elements that the Respondent has registered the Disputed Domain Name precisely because the Respondent was well aware of the existence of the Complainant's activity and organization and its trademarks LECLERC.

The Complainant then moves on to make submissions on the Disputed Domain Name being used in bad faith and commences by stating that, for the reasons already demonstrated, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name identically reproducing the Complainant's trademarks LECLERC and GALEC and therefore creating confusion with the Complainant's activities. The Complainant also states that there is no legitimate or fair use of the Disputed Domain Name, as the Disputed Domain Name points to an inactive page and submits that previous Panels have decided that such use is deprived of any real and substantial offer of goods or services.

The Complainant submits that, considering the risk of fraudulent activities aimed at the Complainant's customers and Internet users and the infringement of its rights, it was only the sending of letters before action by the Complainant's representative to the registrar of the Disputed Domain Name and the MX servers' host, as set out in Annex 8 to the Complaint, that the Disputed Domain Name was blocked by the relevant registrar and the MX servers have been deactivated. The Complainant submits that the Disputed Domain Name disrupts the Complainant's business and causes harm to the Complainant's brand image, which perception will be very harmful for the activities and image of the Complainant.

Indeed, says the Complainant, such MX servers were set up on the Disputed Domain Name, which led the Complainant to believe that the Respondent could use these MX servers for phishing purposes by sending fraudulent emails. The Complainant concludes that the Respondent has undoubtedly registered the Disputed Domain Name precisely because the Respondent was well aware of the existence and organization and of the Complainant and its trademark LECLERC.

The Complainant concludes that, for all the foregoing reasons, the Complainant is in a position to state that the Disputed Domain Name was registered and is being used in bad faith.

The Remedy requested by the Complainant

The Complainant requests the Administrative Panel appointed in this case to decide that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; 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.

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 registered rights in respect of its LECLERC trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1, which the Panel accepts is well-known in France and several other countries in Europe. The Complainant has also established registered rights in the GALEC trademark, which is owned by an associated company of the Complainant.

The entirety of the Complainant's trademark LECLERC is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. In fact, the entirety of the trademark GALEC is also reproduced in the Disputed Domain Name, this trademark being owned by another part of the Complainant's organization, which does not prevent confusing similarity, as previous Panels have found.

It is also well-established in UDRP jurisprudence that the applicable Top-Level-Domain ("TLD") is to be ignored when it does not form part of the relevant trademark for comparison purposes. The addition of the TLD, in this case ".co", is a standing requirement and is to be disregarded when considering confusing similarity.

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, previous Panels have recognized that proving a respondent lacks rights or legitimate interests in a disputed 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 a 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. 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.

In particular, the Respondent has not demonstrated, before any notice to the Respondent of the dispute, use or demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services; or that the Respondent has been commonly known by the Disputed Domain Name; or that the Respondent was making legitimate noncommercial use or fair use of the Disputed Domain Name, without intent, for commercial gain, to misleadingly divert consumers or to tarnish the Complainant's trademark.

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, having reviewed the available record, the Panel finds that the Respondent has registered the Disputed Domain Name with the aim of disrupting the business of the Complainant. The Respondent has pointed the Disputed Domain Name to an inactive webpage and set mail exchange ("MX") servers on it.

Previous Panels have found that the non-use of a disputed domain name 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 distinctiveness, reputation and well-known nature of the Complainant's trademarks and the composition of the Disputed Domain Name 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.

The Panel finds that the Complainant has established the third element of the Policy, in that the Disputed Domain Name has been registered and is being used in bad faith.

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 <galec-leclerc.co> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: January 3, 2025