



URS | DETERMINATION
(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. 2DFFFE35

Determination DEFAULT

I. PARTIES

Complainant(s): Association Des Centres Distributeurs E. LECLERC (A.C.D. Lec) (FR)
Complainant's authorized representative: Inlex (FR)

Respondent(s): Rebecca Henry (US)

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain Name(s): ELECLERC.XYZ
Registry Operator: Xyz.com, LLC
Registrar: Dynadot, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2023-06-09 09:27
Lock of the domain name(s): 2023-06-12 13:34
Notice of Complaint: 2023-06-12 13:35
Default Date: 2023-06-27 00:00
Notice of Default: 2023-06-28 00:17
Panel Appointed: 2023-06-28 00:22
Default Determination issued: 2023-06-28 09:13

IV. EXAMINER

Examiner's Name: Igor Motsnyi

The Examiner certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

1. The Complainant claims it is one of the leading French supermarkets and is well-known in many countries.

The Complainant owns a number of trademarks and domain names with the denomination "E LECLERC" including some EU trademarks referred to below.

The Complainant states that it uses its trademark in connection with a chain of stores. The Complainant alleges its chain of stores and the "E LECLERC" trademarks are well known in France and in the other European countries.

The Complainant alleges that the disputed domain name is identical to the Complainant's trademarks. The new gTLD <.xyz> should not be taken into account as it is a compulsory element of a domain name.

2. The Complainant asserts that the Respondent has no legitimate interest or legitimate rights in the disputed domain name as it is not related to the Complainant.

The disputed domain name was registered anonymously and this may be regarded as an indication that the Respondent is willing to hide his/her identity and the content of the associated website. The WHOIS database details do not indicate that the Respondent's name is composed of the term "E LECLERC", that she/he is commonly known or runs a business under this name or has rights in the name "E LECLERC".

The Respondent has not been authorized by the Complainant to use its mark and there is no business relationship between the Complainant and the Respondent.

3. The Complainant claims it is the leader of the large-scale distribution in France. The Complainant provides numbers indicating significance of its business such as its turnover and the number of employees (currently 133 000 people).

The Complainant refers to previous UDRP decisions by WIPO that confirmed the reputation of the Complainant's trademarks "LECLERC" and "E LECLERC".

"E LECLERC" is not a dictionary or common word and the Complainant claims it is highly distinctive. The Complainant alleges that the Respondent has registered the disputed domain name to unduly benefit from the Complainant's widely known rights.

The disputed domain name resolves to a page offering the disputed domain name for sale and is deprived of any real and substantial offer of goods/services. The Complainant states that it is obvious that the disputed domain name was registered with no intention of legitimate use but only for a commercial purpose, namely to sell the disputed domain name at a higher price than its regular registration price, to the Complainant who is the owner of the "E LECLERC" trademarks.

B. Respondent:

The Respondent did not submit a Response.

C. Procedural findings:

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4.

In accordance with URS Rules Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.



D. Findings of fact:

The disputed domain name was registered on May 20, 2023.

The disputed domain name is offered for sale at the amount of 1,450 USD.

The Complaint relies on the following registered trademarks that include the “E LECLERC” element:

- the EU trademark No. 002700664 “E LECLERC” (word), filed on May 17, 2002, registered on January 31, 2005;
- the EU trademark No. 011440807 “E.LECLERC” (word + device), filed on December 5, 2012, registered on May 27, 2013 and
- the EU trademark No. 002700656 “LECLERC” (word), filed on May 17, 2002, registered on February 26, 2004.

The Complainant provided evidence that its trademarks are used, including data on Complainant’s market share and publications about Complainant’s business under the “E LECLERC” marks.

E. Reasoning:

1. The domain name(s) is(are) identical or confusingly similar to a word mark

The Complainant owns the “E LECLERC” word and device marks and the “LECLERC” word mark listed above and provides proof of use of its marks.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) “*Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing*” (see par. 1.2.1).

The disputed domain name is identical to the “E LECLERC” word mark since the disputed domain name has no other elements.

The disputed domain name is confusingly similar to the other cited trademarks of the Complainant as such marks are clearly recognizable within the disputed domain name.

The <.xyz> gTLD does not affect the perception of the disputed domain name as being connected to the Complainant’s trademark.

The Examiner finds that the requirements set forth under Paragraph 1.2.6.1. of the URS Procedure have been satisfied.

2. Respondent has no rights or legitimate interests to the domain name(s)

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests; and once such prima facie case is made, the burden shifts to the Respondent who has to demonstrate his rights or legitimate interests.

The Complainant has made a prima facie case and the Respondent failed to respond.

The Respondent is not authorized by the Complainant to use its trademarks and the parties are not related. The Respondent is not known at the disputed domain name and is not making legitimate noncommercial or fair use of the disputed domain name.

The Respondent offers the disputed domain name for sale. While selling domain names in certain circumstances may be considered as “bona fide offering of goods or services”, the Examiner finds that this is not the case here since the disputed domain name is identical and confusingly similar to Complainant’s trademarks that are well-known. The fact that the

disputed domain name is identical to one of the Complainant's marks carries a high risk of implied affiliation (see par. 2.5.1 of WIPO Overview 3.0).

There are no any other factors that would indicate any legitimate rights or legitimate interests of the Respondent.

Based on the above, the Examiner finds that the Respondent lacks any legitimate right or legitimate interest with respect to the disputed domain name as per the requirements set forth under Paragraph 1.2.6.2. of the URS Procedure.

3. The domain name(s) was(were) registered and is(are) being used in bad faith

The disputed domain name is offered for sale via dan.com at the price of 1,450 USD.

Offering domain names for sale is not indicative of bad faith *per se* and neither the UDRP nor the URS prohibits selling domain names as such.

As highlighted in the WIPO Overview 3.0: "Generally speaking, panels have found that the practice as such of registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor).

Circumstances indicating that a domain name was registered for the bad-faith purpose of selling it to a trademark owner can be highly fact-specific; the nature of the domain name (e.g., whether a typo of a famous mark, a domain name wholly incorporating the relevant mark plus a geographic term or one related to the complainant's area of commercial activity, or a pure dictionary term) and the distinctiveness of trademark at issue, among other factors, are relevant to this inquiry... Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner" (see par. 3.1.1).

The Complainant provided proof that its "E LECLERC" mark can be considered famous and distinctive. The disputed domain name is identical to one of the Complainant's cited marks and is confusingly similar to the other marks of the Complainant. The term "E LECLERC" is strongly associated with the Complainant and its business. Under these circumstances offering the disputed domain name for sale indicates bad faith and cannot be considered legitimate business activity.

The Examiner finds that the Respondent's behavior falls within par. 1.2.6.3. a. of the URS, namely the Respondent "*has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name*".

Therefore, the Examiner finds that the requirements set forth under Paragraph 1.2.6.3. of the URS Procedure have been satisfied by the Complainant.

4. Abusive Complaint

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements



Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): ELECLERC.XYZ Suspends for the balance of the registration period

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Igor

Surname: Motsnyi

Date: 2023-06-28