



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

**URS DISPUTE NO. D70B9442**

Determination DEFAULT

**I. PARTIES**

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

Respondent: Chandler Dave, CA

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

Domain Name(s): eleclerc.club  
Registry Operator: .club Domains, LLC  
Registrar: NameCheap, Inc.

**III. PROCEDURAL HISTORY**

Complaint submitted: 2016-12-01 15:08  
Lock of the domain name(s): 2016-12-05 15:01  
Notice of Complaint: 2016-12-05 16:00  
Default Date: 2016-12-20 00:00  
Default notice: 2016-12-20 10:01

**IV. EXAMINER**

Examiner's Name: Richard Hill

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:**

Complainant states that it operates a well known chain of super/hypermarket stores. It owns several French, European Union, and international trademarks for the mark E LECLERC, first registered in 2005.

Complainant alleges that the disputed domain name is identical or at least, confusingly similar, to the Complainant's trademarks. It reproduces the elements E LECLERC. The addition of the gTLD .club is of no help in avoiding the risk of confusion. Quite the contrary, it may be perceived as referring to a loyalty program implemented by the Complainant to privileged customers.

According to Complainant, Respondent has no rights or legitimate interests on the disputed domain name. His name is not E LECLERC. He is not commonly known nor runs his business under this name. He has no trademark rights on E LECLERC and has not been authorized by the Complainant to use the name E LECLERC. There is no business relationship between them.

Further, says Complainant, Respondent has tried to blackmail the Complainant in order to sell the domain name, stating: "If you choose to engage Canadian counsel and pay the non-refundable complaint fee and additional fee for a three-person panel, that is your choice and I will abide by your decision. The three-person panel, nominated by both parties, is required where I defend against the complaint. The domain was selling for \$5,000. U.S. Just to settle matters, I will make it half price and offer it for \$2500 US."

Complainant states that Respondent is customary to cybersquatting practices, having been already involved in UDRP proceedings before WIPO and before the Canadian authority CIRA.

### **B. Respondent:**

Respondent has not submitted 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 absence of a Response, the language of the Determination shall be English.

### **D. Findings of fact:**

Complainant has rights in the mark E LECLERC dating back to 2005.

The disputed domain name was registered in 2016.

Complainant has not licensed or otherwise authorized Respondent to use its mark.

Respondent offered to sell the disputed domain name to Complainant for an amount greater than out-of-pocket costs.



### **E. Reasoning:**

The Examiner shall make a Determination of a Complaint in accordance with URS Procedure, URS Rules and any rules and principles of law that he/she deems applicable.

The Examiner shall determine the admissibility, relevance, materiality and weight of the evidence.

For the Complainant to succeed, it must establish that each of the three conditions under the URS Procedure 1.2.6 are satisfied.

If a Party, in absence of exceptional circumstances, does not comply with any provision of, or requirement under, URS Procedure, URS Rules or MFSD's Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate.

The Examiner finds that in this case there are no such exceptional circumstances. Consequently, failure on the part of the Respondent to file a response to the Complaint permits an inference that the Complainant's reasonable allegations are true. It may also permit the Examiner to infer that the Respondent does not deny the facts that the Complainant asserts.

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

The disputed domain name is identical to Complainant's trademark. Moreover, the gTLD ".club" does not affect the identity between the disputed domain name and Complainant's trademarks.

In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (i) of the URS Procedure have been satisfied.

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

Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances which could demonstrate, pursuant to the URS, any rights or legitimate interests in the disputed domain name.

Complainant has not authorized Respondent nor granted him a license or permission to register the disputed domain name or use its trademarks.

There is no evidence in the files to indicate that Respondent is commonly known by the disputed domain name.

The evidence in the file indicates that Respondent offered to sell the disputed domain name for a price in excess of out-of-pocket costs. That is not a legitimate or bona fide use of the disputed domain name.

In these circumstances and absent evidence to the contrary, the Examiner finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain

name and that the requirements of Paragraph 1.2.6 (ii) of the URS Procedure have been satisfied.

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

Respondent (who did not reply to Complainant's contentions) has not presented any plausible explanation for his use of Complainant's well-known mark. As already noted, the Panel shall draw such inferences from Respondent's failure to reply as it considers appropriate. Accordingly, the Panel finds that Respondent did not have a legitimate use in mind when registering the disputed domain name.

Indeed, as noted above, Respondent offered to sell the disputed domain name for a price in excess of out-of-pocket costs. This constitutes bad faith use of the disputed domain name.

In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (iii) of the URS Procedure have been satisfied.

### **4. Abusive Complaint**

The Examiner finds that the Complaint was not abusive and did not contain material falsehoods.

## **VIII. DETERMINATION**

### A. Demonstration of URS elements

Demonstrated

### B. Complaint and remedy

Complaint: Accepted

Domain Name(s): Suspend for the balance of the registration period

### C. Abuse of proceedings

Finding of abuse of proceedings: Not found

### D. Publication

Publication: Publish the Determination

## **SIGNATURE**

Name: Richard

Surname: Hill

Date: 20 December 2016