

ADMINISTRATIVE PANEL DECISION

ELO v. Carl Max

Case No. D2023-1248

1. The Parties

The Complainant is ELO, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Carl Max, United States of America.

2. The Domain Name and Registrar

The disputed domain name <auchanplanet.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2023. On March 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 2023, 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, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2023, 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 March 27, 2023.

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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default On May 8, 2023.

The Center appointed Halvor Manshaus as the sole panelist in this matter on May 23, 2023. 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 multinational retail group that was founded in 1960 and is headquartered in Croix, France. The Complainant owns several trademark registrations across various jurisdictions, including the following:

- The European Union trademark registration No. 000283101, AUCHAN registered on August 19, 2005, for various goods and services in classes 1 to 41.
- The European Union trademark registration No. 004510707, AUCHAN registered on January 19, 2007, for various goods and services in classes 35 and 38.
- The International trademark registration No. 625533, AUCHAN registered on October 19, 1994, for various goods and services in classes 1 to 42.
- The International trademark registration No. 952847, AUCHAN registered on August 10, 2007, for various goods and services in classes 1, 35 and 38.
- The International trademark registration No. 1011777, AUCHAN registered on February 19, 2009, for various goods and services in classes 1 to 45.

The disputed domain name was registered on June 5, 2022, and resolves to a website which utilizes the Complainant's logo.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of trademark registration of AUCHAN, and that the disputed domain name captures the Complainant's trademark in its entirety with the term "planet" added. According to the Complainant, the mere addition of this term does not eliminate the confusingly similarity between the disputed domain name and the Complainant's trademark.

Moreover, the Complainant argues that the Respondent's use of the disputed domain name contributes to the confusion as the Respondent uses the disputed domain name to advertise and share information about the Complainant's business and the Complainant's logo. According to the Complainant, this suggests that the Respondent intends to use the disputed domain name to further customer confusion.

The Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not sponsored or affiliated with the Complainant, nor has the Complainant granted permission to use its trademarks or domain names. Additionally, the Respondent filed for registration of the disputed domain name on June 5, 2022, significantly after the Complainant filed for registration of its trademark and domain name and after the Complainant first used its trademark.

The Complainant submits that the Respondent is not commonly known by the disputed domain name and employs a privacy service, indicating a lack of rights or legitimate interests. Furthermore, the Complainant argues that the Respondent does not make a *bona fide* offering of goods or services, nor does the Respondent use the disputed domain name for legitimate, noncommercial purposes. The Respondent use of the Complainant's logo on the website at the disputed domain name is a deliberate attempt to exploit the fame and goodwill in the Complainant's brand. The metadata associated with the disputed domain name refers to the Complainant and its trademark, further increasing the likelihood of confusion for Internet users searching for the Complainant.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant's trademark has been in use and become known internationally well before the Respondent's registration of the disputed domain name. Furthermore, the Complainant holds that the disputed domain name is intended to cause confusion among Internet users meaning that the disputed domain name is registered and used in bad faith. The Respondent has used the Complainant's logo and trademark throughout the website and links to chatting services impersonating the Complainant's accounts, evidence that the registration was made to cause confusion.

B. Respondent

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

6. Discussion and Findings

The Complainant has, in accordance with paragraph 4(a) of the Policy, requested that the disputed domain name be transferred to the Complainant.

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and have the disputed domain name transferred, the Complainant must establish that the three following elements are satisfied for the disputed domain name:

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

Pursuant to paragraph 15 (a) of the Rules, the Panel shall decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

On the basis of the evidence submitted by the Complainant and, in particular, with regards to the content of the relevant provisions of the Policy (paragraph 4(a), (b), and (c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

Under the first element of paragraph 4(i) of the Policy, the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the evidence submitted by the Complainant, describing the Complainant's trademark registrations and associated business, the Panel finds that the Complainant holds several trademark registrations of AUCHAN in several jurisdictions and that the AUCHAN mark is vested with significant goodwill.

The disputed domain name comprises the Complainant's trademark in its entirety together with the dictionary word "planet" and the generic Top-Level Domain (gTLD) ".com". The gTLD part of a domain name is not taken into consideration when examining the identity or similarity between a complainant's trademark and a disputed domain name.

The Panel finds that the addition of the dictionary word “planet” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Based on the above, the Panel concludes that the Complainant has satisfied the requirements under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In order for the Complainant to succeed under paragraph 4(a)(ii) of the Policy, the Complainant must establish a *prima facie* case that the Respondent has no right or legitimate interest in the disputed domain name. If the Complainant establishes a *prima facie* case that the Respondent has no right or legitimate interest in the disputed domain name, the evidentiary burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The disputed domain name features a webpage using the Complainant’s trademark, giving the impression that it is the official website of the Complainant. As a result, the Respondent takes advantage of the goodwill and reputation associated with the Complainant’s brand. As held in *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. [D2001-0211](#), such commercial use cannot be considered legitimate.

In the Panel’s view, the presented evidence referred to by the Complainant is sufficient to establish *prima facie* case that the Respondent has no rights or legitimate interest in the disputed domain name. The Panel has not been presented with, or discovered, any evidence that i) the Respondent has received a license or other permission to use the Complainant’s trademark or any domain name incorporating this mark; (ii) the Respondent is commonly known by the disputed domain name; (iii) the Respondent has acquired trademark rights to use the disputed domain name; or (iv) the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Therefore, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy have been met.

C. Registered and Used in Bad Faith

To prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name was registered and is being used in bad faith.

The Panel finds that the Complainant has credibly shown that the AUCHAN mark is internationally recognized and holds goodwill. Considering the Respondent’s use of the Complainant’s logo and links to social media applications impersonating the Complainant, as well as the fact that the Complainant’s registration of the AUCHAN trademark predates the registration of the disputed domain name, it is unlikely that the Respondent was unaware of the Complainant’s right to the AUCHAN mark at the time of registering the disputed domain name. Therefore, the Panel concludes that the Respondent had or should have had knowledge of the Complainant’s trademark registrations.

The Panel further finds that the Respondent registered the disputed domain name with the intention to cause confusion among Internet users, which demonstrate bad faith (see *OLX, B.V. Kumud, G. / Whois Agent, Whois Privacy Protection Service, Inc.*, WIPO Case No. [D2015-0218](#)). Additionally, the fact that Respondent has not filed any response to these proceedings or the Complainant’s cease-and-desist-letter, and has registered the disputed domain name using a privacy service, suggests bad faith.

Based on the forgoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Thus, the third element of paragraph 4(a) of the Policy has been satisfied.

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, <auchanplanet.com> be transferred to the Complainant.

/Halvor Manshaus/

Halvor Manshaus

Sole Panelist

Date: June 6, 2023