

ADMINISTRATIVE PANEL DECISION

ELO v. Angelique ragot, Sella Martin
Case No. D2023-2367

1. The Parties

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

The Respondents are Angelique Ragot, France, and Sella Martin, France.

2. The Domain Names and Registrars

The disputed domain name <groupe-elofrance.com> is registered with NameSilo, LLC, and the disputed domain name <groupeelo-france.com> is registered with NameCheap, Inc. (collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2023. On June 1, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On June 1, 2023, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf and PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 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 June 14, 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 Respondents of the Complaint, and the proceedings commenced on June 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on July 12, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on July 20, 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, formerly known as Auchan Holding SA, is a holding company which operates in particular in the field of retail. Across its subsidiaries, Elo employs over 160,000 employees, it operates supermarkets in Europe, Asia and Africa, and is ranked about the 32nd largest employer in the world. As of December 2021, its consolidated revenue, excluding taxes, exceeded EUR 40 billion.

As a basis for its Complaint, the Complainant relies in particular on the International Registration ELO No. 647375, registered on November 3, 1995.

The disputed domain names were registered on January 11 and March 20, 2023. In the course of this proceeding the Registrars disclosed the identity of the Respondents, individuals with different names and addresses in France.

The disputed domain names resolve to pages which are not active.

However, the disputed domain names are used to create email addresses which are used to send messages to potential suppliers. Annexed to the Complaint are a set of email exchanges with potential suppliers of the Complainant, regarding possible orders and their payments. In these emails, the Respondents impersonate an alleged head of purchases department of the Complainant, and uses the authentic contact details of the Complainant, such as its address, VAT number and company registration number.

5. Parties' Contentions

A. Complainant

The Complainant's arguments in support of its Complaint can be summarized as follows:

First, the Complainant claims that the disputed domain names are confusingly similar to its trade mark ELO. It states in particular that "[t]he Disputed Domain Names can be considered as capturing, in its entirety, Complainant's ELO trade mark and simply adding the terms 'groupe' and 'france' to the end of the trade mark".

Second, it indicates that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents are not sponsored or affiliated with the Complainant in any way, and were not given permission to use the Complainant's trade mark in any manner. Also, the Complainant states that the Respondents are not commonly known by the disputed domain names. The Complainant also refers to the fraudulent phishing activities of the Respondents and indicates: "By sending emails from the Disputed Domain Names, Respondent is attempting to pass itself off as the Complainant, which provides evidence of Respondent's lack of legitimate interests or rights in the Disputed Domain Names [...] This use of the Disputed Domain Names, presumably for commercial gain, and with devious, nefarious motives, clearly fails to constitute a *bona fide* offering of goods or services". Finally, the Complainant refers to the lack of use of the disputed domain names, which resolve to a blank page. This, claims the Complainant, shows a lack of attempt to make a legitimate use of the disputed domain names.

Third, the Complainant claims that it has been using its registered ELO's trade mark as a holding name since 2021, which is well before the Respondents' registration of the disputed domain names on January 11 and March 20, 2023. The Complainant further adds that the Respondents have demonstrated a knowledge of and familiarity with the Complainant's brand and business. Moreover, the Respondents' use of the disputed domain names in furtherance of a phishing scheme to impersonate the Complainant, further demonstrates

an actual knowledge of the Complainant and its brand. The Complainant states that performing searches across a number of Internet search engines for “groupe-elo-france” and “groupeelo-france.com” returns multiple links referencing the Complainant and its business. Finally, the Complainant claims that the disputed domain names currently resolve to inactive sites and are not being used, though past panels have noted that the word bad faith “use” in the context of paragraph 4(a)(iii) does not require a positive act on the part of the Respondents – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy, paragraph 4(a)(iii).

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Consolidation of Multiple Respondents

The disputed domain names are registered in the name of distinct Respondents, with different addresses in France. They were registered in 2023, but months apart. Still, the Complainant submits that the Respondents should be consolidated, on account of the fact that the disputed domain names were registered around the same time under a privacy service and used in the same fraudulent email scheme. It also adds that the disputed domain names have the similar configurations.

Regarding consolidation scenarios, section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that “where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants’ identity(ies) including pseudonyms, (ii) the registrants’ contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).”

The Panel agrees with the Complainant that the disputed domain names are under common control: this is irrefutable in view of the quasi-identity of the phishing emails, which are sent by the Respondents. The adoption of a very similar structure for the disputed domain names, with identical the sequence “groupe-elo-france” also supports this finding. The Respondents used same email signature in the phishing emails. The Moreover, the Panel notes the Respondents have not objected to the consolidation, or otherwise participated in the present proceeding, and the Panel is unable to consider any disadvantage to the Parties by accepting the Complainant’s request.

Therefore, the Panel determines that the Respondents be consolidated. The Respondents are hereinafter referred to as the “Respondent”.

6.2 Substantive Issues

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain names are identical or confusingly similar to a trade mark 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 names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain names are confusingly similar to a trade mark or a service mark in which it has rights. This is primarily a standing requirement.

The Complainant owns trade mark rights over the sign ELO. This trade mark is fully reproduced, and perfectly recognizable, in the disputed domain names. The addition of the words “groupe” and “France” after or before a hyphen, does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#): “Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

The disputed domain names are therefore confusingly similar to the trade marks of the Complainant.

The Complainant is deemed to have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has satisfied its burden of evidence here: it has argued that it does not know the Respondent, is not linked to the Respondent, and that to its knowledge the Respondent has no rights or legitimate interests in the disputed domain names. Besides, the disputed domain names are not used in connection with a *bona fide* offering of goods or services. On the contrary, the use by the Respondent of a phishing scheme can never confer rights or legitimate interests (see section 2.13 of the [WIPO Overview 3.0](#)).

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the

complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or

- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

It is undisputable that the Respondent has registered, and is using, the disputed domain names in bad faith.

On the one side, the Respondent had the Complainant's trade mark in mind when it registered the disputed domain names. Indeed, the disputed domain names not only reproduce the trade mark ELO; they also contain the word "groupe" and the country name "france", where the Complainant is based.

On the other side, the Respondent operates a phishing scheme to the detriment of the Complainant and of the third parties with which it established contacts. By using misleading email addresses, in which the Respondent has reproduced the trade mark and full data of the Complainant, in order to impersonate it, the Respondent lured potential providers and attracted them for commercial gain.

Accordingly, the third criteria set out in paragraph 4(a) of the Policy is also satisfied and the Complaint succeeds.

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 names, <groupe-elofrance.com> and <groupeelo-france.com>, be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: August 3, 2023