

## **ADMINISTRATIVE PANEL DECISION**

ELO v. Gene Brice Christian

Case No. D2022-0174

### **1. The Parties**

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

The Respondent is Gene Brice Christian, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <auchanretail-group.com> is registered with One.com A/S (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2022. On January 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2022 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 January 24, 2022.

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 January 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on February 22, 2022. 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 headquartered in Croix, France. The Complainant was founded in 1960 and currently is the 11th largest food retailer in the world, operating in 17 countries, across Europe, Africa and Asia.

The Complainant (previously known as Auchan Holding SA) holds a number of trademarks over AUCHAN, alone or with device, in different jurisdictions. Such as:

- International trademark, AUCHAN, registration number 284616, registered on June 5, 1964.
- European Union trademark, AUCHAN, registration number 000283101, registered on August 19, 2005.

The AUCHAN trademark is to be considered well-known for the purposes of the UDRP. See *Auchan Holding v. Alvaro Romon Sancho*, WIPO Case No. [D2016-0187](#).

The disputed domain name <auchanretail-group.com> was registered on November 18, 2021 and is not redirecting to a website. However, the disputed domain name has been used in connection to purportedly fraudulent purchase orders to the Complainant's business associates.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant alleges to be owner of the AUCHAN trademark in a number of jurisdictions. The Complainant contends that while the disputed domain name includes the Trademark, the addition of the terms "retail group" strengthen confusion with its trademarks. Indeed, the Complainant is of the opinion that such additions reinforces consumer confusion between the disputed domain name and the mark. The Complainant also refers to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8: "Where the relevant trademark 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 Complainant also asserts that no distinctiveness may be drawn from the disputed domain name when using hyphen. Further, the Top-Level Domain ("TLD") in the disputed domain name is a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

With regard to the second requirement, the Complainant submits that Respondent is not sponsored by or affiliated with the Complainant in any way. Neither the Complainant has licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademark.

The Complainant also alleges that the Respondent is not commonly known by the disputed domain name. The Complainant refers to the Notice of Registrant Information that identifies the Registrant as "Gene Brice Christian" and highlights that such name does not resemble to the disputed domain name in any manner.

The Complainant contends that the Respondent's use of the disputed domain name does not constitute a *bona fide* offering of goods or services. The Respondent is using the disputed domain name to create the impression that Respondent's website and email is one that is authorized and administered by the

Complainant, for the sole purpose of sending emails which have the appearance of coming from Complainant's Head of Food and Non-Food Products and International Sourcing. By sending emails from the disputed domain name, the Respondent is attempting to pass itself off as the Complainant in an attempt to "phish" personal information from the Complainant's customers. Such use is, presumably, for commercial gain, and with devious and nefarious motives, fails to constitute a *bona fide* offering of goods or services pursuant to Policy.

Currently, says the Complainant, the disputed domain name redirects Internet users to a website that resolves to a blank page and lacks content. Such non-use does not constitute a *bona fide* offer of goods or services as required by the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the disputed domain name registrant as a condition of registration.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As noted, the Complainant is the owner of the AUCHAN registered trademark.

The Complainant rightly refers to the reproduction of the AUCHAN trademark within the disputed domain name. Indeed, prior UDRP panel decisions have held that the incorporation of a trademark in its entirety into a domain name leads to the consideration of such domain name being identical or confusingly similar to that trademark for purposes of UDRP standing. Thus, the test focus on the reproduction of the AUCHAN trademark in the disputed domain name which is apparent in the present case. See *Sensis Pty Ltd., Telstra Corporation Limited v. Yellow Page, Yellow Page Marketing B.V.* WIPO Case No. [D2010-0817](#).

The Panel also notes that the addition of terms such as "retail" or "group" or even the introduction of an hyphen, does not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), section 1.8.

It is well admitted that generic Top-Level Domains ("gTLDs") are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Accordingly, the Panel finds that the disputed domain name <auchanretail-group.com> is confusingly similar to the AUCHAN trademark in which the Complainant has rights and, therefore, the Panel finds that the first

requirement is met.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

While the Respondent did not answer the Complaint, the Complainant has made his case based on the following allegations: First, the Respondent is not sponsored or associated with the Complainant. Second, the Respondent is not commonly known by the domain name, and the Respondent's name prove it and more importantly, third, the disputed domain has been used for phishing by using the name of the Complainant's Head of Food and Non-Food Products and International Sourcing department in a disputed domain name email account, seemingly to obtain personal information and/or money from third parties. All of this points the Panel to affirm that the Complainant has made out a *prima facie* case. The Panel indeed highlights that the phishing practice is an illegitimate undertaking that can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

It is well established that where a complainant makes out a *prima facie* case that the 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 disputed domain name. There is no response by the Respondent in this proceeding, and there is no rebuttal of the Respondent to the Complainant's *prima facie* case. Therefore, the Respondent has failed to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests.

Consequently, the Complainant has demonstrated that the Respondent lacks rights or legitimate interests in the disputed domain name to the satisfaction of the Policy, Paragraph 4(a)(ii).

## **C. Registered and Used in Bad Faith**

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, the Panel now looks at the third requirement of the test.

The Panel finds that the Respondent was aware of the Complainant and its AUCHAN trademark when registering the disputed domain name. The Complainant has provided evidence of Respondent's use in an attempt to purportedly profit from the Complainant's business and marks by impersonating the Complainant before one of its providers. Further, the Respondent has registered a domain name that fully incorporates Complainant's AUCHAN trademark in conjunction with the terms "retail" and "group". Such additions draw a connection to the services offered by the Complainant, and its group of companies. This composition of the disputed domain name along its use strengthens the conclusion of the Respondent's knowledge of the AUCHAN trademark, and its registration in bad faith.

Likewise, the mere registration of a domain name that is confusing similar to a well-known mark by an unaffiliated entity can create a presumption of bad faith. See *Compagnie de Saint-Gobain v. Contact Privacy Inc. Customer 1249589662 / Latonya Peterson* WIPO Case No. [D2021-3664](#).

Upon the above circumstances the Panel finds that the disputed domain name was registered in bad faith.

Besides, the records lead the Panel to conclude that the Respondent's primary intent was to take advantage of the Complainant's trademark rights by creating a likelihood of confusion with the Complainant's mark as to the source and then, to impersonate the Complainant. As noted in the preceding heading, the Respondent lacks rights or legitimate interests mainly for having act illegally or in fraud. See [WIPO Overview 3.0](#), section 3.1.4. "...given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith".

Because of these, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## 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 <auchanretail-group.com> be transferred to the Complainant.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: March 8, 2022