

ADMINISTRATIVE PANEL DECISION

ELO v. Privacy Service Provided by Withheld for Privacy ehf / Fabrice Armand

Case No. D2022-0749

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Fabrice Armand, France.

2. The Domain Name and Registrar

The disputed domain name <auchanretail-fr.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 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 March 4, 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 March 7, 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 March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2022.

The Center appointed Elise Dufour as the sole panelist in this matter on April 6, 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 ELO, previously known as Auchan Holding SA, is a multinational retail group headquartered in France, founded in 1960, and operating in 17 countries.

The Complainant owns several trademark registrations including the following:

- International trademark AUCHAN, n° 284616, registered on June 5, 1964, duly renewed and designating goods and services in international classes 03, 09, 11, 25, 29 and 32.
- International trademark AUCHAN & Device, n°1011777, registered on February 19, 2009, duly renewed, and designating goods and services in international classes 01 to 45.
- French trademark AUCHAN & Device, n°1244726, registered on September 9, 1983, duly renewed and designating goods and services in international classes 01 to 45.
- European trademark AUCHAN & Device, n°004510707, registered on January 19, 2007, duly renewed and designating goods and services in international classes 35 and 38.

The Complainant also owns numerous domain names that contain the trademark AUCHAN, including notably the following ones:

- <auchan.fr> registered on February 11, 1997.
- <auchan-retail.com> registered on October 27, 2015.

The disputed domain name <auchanretail-fr.com> was registered on September 22, 2021.

According to evidence submitted by the Complainant, the Respondent is using the disputed domain name to redirect visitors to a website featuring links to third-party websites. Some of those third-party websites are directly in competition with the Complainant's activity.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is (i) confusingly similar to its earlier trademarks, (ii) that the Respondent has no rights or legitimate interests in the disputed domain name, and (iii) that the disputed domain name has been registered and is being used in bad faith.

(i) The Complainant claims that the disputed domain name is highly confusingly similar to its trademarks, since the disputed domain name reproduces its AUCHAN trademarks together with the generic terms "retail-fr". The disputed domain name is equally similar to the Complainant's domain names including <auchan.fr> and <auchan-retail.com>. For the Complainant, the second part of the disputed domain name is the generic term "retail-fr", which reinforces the risk of confusion, the term "fr" being the country code for France, country

of origin of the Complainant, and the term “retail” referring to the Complainant’s activity.

(ii) The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Complainant has not licensed or otherwise permitted the Respondent to use its trademark AUCHAN. The fact that the Respondent is using the disputed domain name to redirect visitors to third-party websites in competition with the Complainant’s activity indicates the Respondent’s intentions to compete with the Complainant and capitalize on its reputation.

(iii) Due to the strong reputation and well-known character of the Complainant and its trademarks, the Complainant considers that the Respondent could not have ignored the existence of the Complainant’s trademarks at the time the disputed domain name was registered. The Complainant also claims that the Respondent’s use of the disputed domain name is made in bad faith, as it aims to cause confusion among Internet users as to the source of the disputed domain name. Furthermore, the Complainant claims that the use of a privacy service by the Respondent, in order to hide its identity is an additional indication of bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (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 was registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Complainant submitted evidence, which incontestably and conclusively establishes rights on AUCHAN trademarks and on the ownership of domain names which contain the trademark.

The disputed domain name wholly incorporates the Complainant’s trademark AUCHAN, which, as it has been long established by previous UDRP panels, may be sufficient to determine that a disputed domain name is identical or confusingly similar to the Complainant’s trademarks.

The Respondent has added the term “retail” to the disputed domain name, which is descriptive of the Complainant’s activity.

In addition, the disputed domain name differs from the Complainant’s trademarks through the addition of “-fr”, which is the ISO alpha-2 country code for France.

As a result, the Panel finds that the addition of the terms “retail-fr” does not prevent a finding of confusing similarity.

Thus, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks and that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

The burden of proof is on the Complainant to demonstrate a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a *prima facie* case, the burden of production then shifts to the Respondent, which has to then demonstrate rights or legitimate interests in the disputed domain name.

The Complainant asserts that the Respondent is not sponsored by or affiliated with the Complainant in any way. And the Complainant has not given the Respondent any permission to use the Complainant’s trademarks in any manner, including in domain names.

The fact that the Respondent is using the disputed domain name to redirect visitors to third-party websites competing with the Complainant’s activity is further evidence that the Respondent’s use of the disputed domain name does not represent a *bona fide* offering under Policy, paragraph 4(c). The Panel believes that the Respondent uses of the disputed domain name in order to compete with the Complainant’s activity or to capitalize on its reputation.

The foregoing facts and allegations, coupled with the fact that AUCHAN is not a common word, makes it clear for the Panel that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Therefore, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and that the second element of the Policy has been satisfied.

C. Registered and Used in Bad Faith

The Complainant and its AUCHAN trademarks are very well known, with trademark registrations across a number of countries.

To this is added the fact that AUCHAN is not a common word, and the Respondent has added the descriptive terms “retail-fr” referring to the Complainant’s activity and country of origin.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the AUCHAN trademarks at the time the Respondent registered the disputed domain name.

In addition, the Panel notes that when registered the disputed domain name the Respondent used a privacy service. As previous panels established, under certain circumstances, such use of privacy services can be an indication of the Respondent bad faith. Given the elements of the present case, the Panel considers that the Respondent’s use of privacy services is an indication of the Respondent’s bad faith.

As per the use in bad faith, the Panel considers that the only feasible explanation for the Respondent’s registration of the disputed domain name including the Complainant’s well-known trademark together with the descriptive terms “retail-fr” is that the Respondent intends to cause confusion, mistake and deception by means of the disputed domain name.

Finally, the Panel considers the Respondent failure to file a response as further evidence of bad faith.

The Panel finds that the Complainant successfully fulfilled the requirements of paragraph 4(a)(iii).

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-fr.com> be transferred to the Complainant.

/Elise Dufour/

Elise Dufour

Sole Panelist

Date: April 20, 2022