

## **ADMINISTRATIVE PANEL DECISION**

### **ELO v. MELODIE CABRAL**

#### **Case No. D2022-4053**

#### **1. The Parties**

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

The Respondent is MELODIE CABRAL, France.

#### **2. The Domain Names and Registrars**

The disputed domain name <auchan-hypemarche.com> is registered with Register SPA.

The disputed domain name <auchan-hypemarche.store> is registered with eNom, LLC.

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On October 28, 2022 and November 2, 2022, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 2022 providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 4, 2022.

The Registrars also indicated that the language of the registration agreement for the disputed domain name <auchan-hypemarche.com> is French and the language of the registration agreement for the disputed domain name <auchan-hypemarche.store> is English. The Center sent an email communication to the Complainant on November 3, 2022, inviting the Complainant to provide sufficient evidence of an agreement between the Parties for English to be the language of proceeding, a Complaint translated into French, or a request for English to be the language of proceedings. The Complainant filed a request for English to be the language of proceedings on November 4, 2022. The Respondent did not submit any arguments.

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 in both French and English, and the proceedings commenced on November 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 1, 2022.

The Center appointed Christophe Caron as the sole panelist in this matter on December 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, the holding company of a multinational group in food retailer.

The Complainant owns several trademarks AUCHAN, including:

- the International trademark AUCHAN No. 284616 registered on June 5, 1964;
- the International trademark AUCHAN No. 332854 registered on January 24, 1967;
- the European Union trademark AUCHAN No. 000283101 registered on August 19, 2005;
- the European Union trademark AUCHAN No. 004510707 registered on January 19, 2007;

The Complainant also owns numerous domain names, including:

- <auchan.fr> registered on February 10, 1997;
- <auchan-retail.com> registered on October 27, 2015;

The disputed domain names <auchan-hypemarche.com> and <auchan-hypemarche.store> were registered on September 6, 2022. The disputed domain names resolve to inactive websites.

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

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

The Complainant makes the following contentions.

##### Identical or Confusingly Similar

The Complainant contends that the disputed domain names <auchan-hypemarche.com> and <auchan-hypemarche.store> are confusingly similar to its trademarks AUCHAN since they merely consist of the Complainant's trademark and an additional term ("hypemarche", a misspelling of the French word "hypermarché") that closely relates to the Complainant's business.

##### Rights or Legitimate Interests

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

In addition, the Complainant states that no evidence including the Whois record for the disputed domain names, suggests that the Respondent is commonly known by the disputed domain names, then the Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain names.

Moreover, the Complainant asserts that at the time of filing the Complaint, the Respondent was using a privacy Whois service, which past panels have found to equate to a lack of legitimate interest.

The Complainant also states that the Respondent is using the disputed domain names to redirect internet users to websites that resolve to blank pages and lack content. Thus, the Respondent has failed to make use of these disputed domain names' websites and has not demonstrated any attempt to make legitimate use of the disputed domain names and websites, which evinces a lack of rights or legitimate interests in the disputed domain names.

Considering these elements, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

#### Registration and Use in Bad Faith

The Complainant contends that it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brands at the time the disputed domain names were registered since (i) its AUCHAN trademarks are known internationally, with trademark registrations across numerous countries, including France, (ii) the Respondent used the address of the Complainant's address in France and (iii) its AUCHAN trademarks are incorporated in their entirety in the disputed domain names.

Moreover, the Complainant states that the disputed domain names currently resolve to inactive sites and are not being used.

In addition, the Complainant states that the Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity.

The Complainant also points out that the Respondent has ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding.

For the above-mentioned reasons, the Complainant concludes that the disputed domain names were registered and are being used in bad faith by the Respondent.

#### **B. Respondent**

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

### **6. Discussion and Findings**

#### **6.1 Language of the Proceeding**

The Registrars indicated that the language of the registration agreement for the disputed domain name <auchan-hypemarche.com> is French and the language of the registration agreement for the disputed domain name <auchan-hypemarche.store> is English.

The Center sent an email communication to the Complainant on November 3, 2022, inviting the Complainant to provide sufficient evidence of an agreement between the Parties for English to be the language of proceeding, a Complaint translated into French, or a request for English to be the language of proceedings.

The Complainant filed a request for English to be the language of proceedings on November 4, 2022 based in particular on the fact that the Complainant is unable to communicate in French and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

The Respondent did not submit any arguments.

Having regard to the circumstances of this case, in particular the following, the Panel determines that English be adopted as the language of the proceedings:

- The language of one of the two registration agreements is English;
- The Respondent did not reply to the Complainant request for English to be the language of proceedings;
- The Complaint has already been submitted in English and the Panel is fully capable of dealing with the Complaint in English;
- Since no response has been filed, there does not appear to be any procedural benefit to choose French to be the language of the proceedings and it is likely that delay to the proceedings would result should the Complainant be required to re-submit the Complaint in French.

## **6.2 Decision**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to trademarks registered in which the Complainant has rights.

The Complainant is the owner of several trademarks AUCHAN, including the trademarks listed in Section 4 above.

The trademark AUCHAN is entirely reproduced in the disputed domain names <auchan-hypemarche.com> and <auchan-hypemarche.store>.

The addition of the generic Top Level-Domains “.com” and “.store” is usually disregarded. The addition of the term “hypemarche” does not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Panel therefore finds that the disputed domain names are confusingly similar to the registered trademarks AUCHAN in which the Complainant has rights.

Thus, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Paragraph 4(a)(ii) of the Policy provides that the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

This Panel is satisfied that the Respondent has no relationship with the Complainant and that this latter has not granted any rights of use of its trademarks AUCHAN to the Respondent.

Furthermore, the Respondent did not submit any arguments and did not demonstrate any attempt to make legitimate use of the disputed domain names.

Hence, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names and that the requirement of paragraph 4(a)(ii) of the Policy is also satisfied.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent has registered and is using the disputed domain names in bad faith.

Regarding the international reputation of the group of the Complainant and the AUCHAN trademarks, the Respondent could not have ignored them at the time of the registration.

The Panel further notes that the addition of the term “hypemarche” (which appears as a misspelling of the French word “hypermarché”) refers to the Complainant’s activities.

The Respondent has used on the Whols the Complainant’s address in France.

The Respondent also ignored the Complainant’s attempts to resolve this dispute outside of this administrative proceeding.

For all these reasons, the Panel finds that the disputed domain names <auchan-hypemarche.com> and <auchan-hypemarche.store> have been registered and are being used in bad faith.

### **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, <auchan-hypemarche.com> and <auchan-hypemarche.store> be transferred to the Complainant.

*/Christophe Caron/*

**Christophe Caron**

Sole Panelist

Date: December 20, 2022