

ADMINISTRATIVE PANEL DECISION

ELO v. Uglev Vladimir Gennadevich
Case No. D2022-4884

1. The Parties

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

The Respondent is Uglev Vladimir Gennadevich, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <auchane.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 20, 2022. On December 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 27, 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 December 27, 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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. On December 27, 2022, the Respondent sent an email communication to the Center. The Center sent to the Parties the Commencement of Panel Appointment Process email on February 14, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on February 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, previously known as Auchan Holding S.A., is a multinational retail group headquartered in Croix, France founded in 1960 by Gérard Mulliez and has developed into being one of the largest food retailers in the world, operating in 12 countries, across Europe and Africa.

The Complainant owns several trademark registrations for AUCHAN in various jurisdictions including the following:

International Trademark Registration No. 625533 AUCHAN, registered on October 19, 1994, in classes 1 to 42;

International Trademark Registration No. 1333050 AUCHAN (figurative), registered on September 1, 2016, in class 35;

International Trademark Registration No. 1432360 AUCHAN (figurative), registered on January 23, 2018, in classes 01 to 35;

International Trademark Registration No. 1432278 AUCHAN (figurative), registered on January 23, 2018 in classes 01 – 12, 14, 16 – 33 and 35;

International Trademark Registration No. 1431529 AUCHAN (figurative), registered on January 23, 2018, in classes 01 – 12, 14, 16 to 33 and 35.

The Complainant is also the owner of domain names <auchan.fr> registered on February 10, 1997, <auchan-retail.com> registered on October 27, 2015 and <auchan.com> registered on April 1, 1996.

The Respondent registered the disputed domain name on November 10, 2021 which at the time of drafting this Decision does not resolve to an active webpage. The Complainant has provided evidence showing that the disputed domain name resolved to a website in the Russian language featuring the Complainant's logo, a red/white colour scheme and a list of groceries with prices.

5. Parties' Contentions

A. Complainant

The Complainant's AUCHAN trademark has enjoyed a high degree of fame and reputation several years before the Respondent registered the disputed domain name and is also considered well known for the purposes of the UDRP (see *Auchan Holding v. Alvaro Ramon Sancho*, WIPO Case No. [D2016-0187](#)).

According to Similarweb.com, the Complainant's website at its primary domain name <auchan.fr> has received an average of more than 8 million visitors per month during the three-month period from June to August 2022.

The Complainant claims that the disputed domain name is confusingly similar with the trademark AUCHAN in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, 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.

The Respondent is not commonly known by the disputed domain name.

At the time of filing of the Complaint, the Respondent was using a privacy service, which past panels have found to equate to lack of legitimate interests.

The Respondent previously used the disputed domain name to resolve to a Russian language website that sought to pass itself off as the Complainant by featuring the Complainant's trademark, logo and red/white color scheme, which is clear evidence that the Respondent intended to create consumer confusion.

In response to a cease and desist letter sent by the Complainant on September 30, 2022, the Respondent offered to sell the disputed domain name to the Complainant for the amount of USD 11,400 which far exceeds the Respondent's out-of-pocket expenses in registering the disputed domain name.

In addition to the disputed domain name, a reverse Whois search of the Respondent's email address [...] shows that the Respondent currently holds registrations for several other domain names that misappropriate the trademarks of well-known brands and businesses. This fact demonstrates that the Respondent is engaging in a pattern of cybersquatting/typosquatting, which is the evidence of bad faith registration and use of the disputed domain name.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

However, in its email of December 27, 2022, he claimed that he had no intention to sell the disputed domain name and that he did not register it in bad faith and he registered it because it was free. He did not put the disputed domain name for sale; the company independently approached him and offered to sell it.

6. Discussion and Findings

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 with 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.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side

comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's AUCHAN trademark.

The disputed domain name incorporates the Complainant's trademark AUCHAN in its entirety, with addition of the letter "e", which does not prevent a finding of confusing similarity. Furthermore, the Panel notes the disputed domain name is a misspelling of Complainant's AUCHAN trademark.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark AUCHAN in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proved that they are the owners of the AUCHAN mark. There is no indication that they have licensed or otherwise permitted the Respondent to use any of their trademarks, nor have they permitted the Respondent to register or use the disputed domain name.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark AUCHAN mentioned in section 4 above (Factual Background) and also the Complainant's websites, particularly "www.auchan.fr", when it registered the disputed domain name. By that time, the Complainant had registered and used the trademark AUCHAN for many years.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's trademark AUCHAN in the disputed domain name with the addition of the letter "e" which is tantamount to "typosquatting", with the intention to confuse Internet users and capitalize on the goodwill of the Complainant and its trademark for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the prior use of the disputed domain name to resolve to a website imitating the Complainant's website and offering, as claimed by the Complainant, products competing with those of the Complainant are all indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

In addition, the Respondent's offer to sell the disputed domain name to the Complainant for an amount likely far in excess of the Respondent's expenses in registering the disputed domain name contributes to confirm the Respondent's bad faith.

Regarding the current use of the disputed domain name UDRP panels have found that non-use of a domain name does not prevent a finding of bad faith under the doctrine of "passive holding" when circumstances exist such as the distinctiveness or reputation of the complainant's mark, the failure of the respondent to submit a formal response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the disputed domain name may be put. The Panel finds that all these circumstances are relevant to this administrative proceeding and therefore that a finding of bad faith is consistent with the doctrine of "passive holding" (section 3.3 of [WIPO Overview 3.0](#)).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <auchane.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: March 6, 2023