

ADMINISTRATIVE PANEL DECISION

ELO v. Steve Konan
Case No. D2022-4959

1. The Parties

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

The Respondent is Steve Konan, Côte d'Ivoire.

2. The Domain Name and Registrar

The disputed domain name <auchandistribution.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 December 23, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on January 5, 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 January 6, 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 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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 30, 2023.

The Center appointed Roger Staub as the sole panelist in this matter on February 3, 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 is ELO, a French company, which was previously known as Auchan Holding AG. Together with other group companies the Complainant is part of Auchan Retail, a multinational group headquartered in France (“Auchan”).

According to Auchan’s website “www.auchan-retail.com”, Auchan has been active as a retailer for more than 55 years. Auchan is currently present in more than a dozen countries. Around 1’985 points of sale are run under the AUCHAN banner. Auchan has around 179’590 employees and has generated a consolidated revenue of around EUR 32 billion (excluding taxes). Auchan is said to be the 11th largest retailer in the world. These figures are taken from screenshots of Auchan’s website “www.auchan-retail.com” that were submitted to the Panel.

The Complainant and other group companies of Auchan own various trademark registrations consisting of, or containing, the word “Auchan” in various jurisdictions. The Complainant’s portfolio of AUCHAN trademark registrations includes, *inter alia*, the following trademark registrations:

- International trademark No. 284616 AUCHAN, registered on June 5, 1964, in Classes 03, 09, 11, 25, 29, 32;
- International trademark No. 332854 AUCHAN, registered on January 24, 1967, in Classes 35 to 42;
- International trademark No. 625533 AUCHAN, registered on October 19, 1994, in Classes 01 to 42;
- International trademark No. 1011777 AUCHAN, registered on February 19, 2009, in Classes 01 to 45;
- French trademark No. 1244726 A AUCHAN, registered on September 9, 1983, in Classes 01 to 45;
- European Union trademark No. 000283101 AUCHAN, registered on August 19, 2005, in Classes 01 to 41;
- European Union Trademark No. 004510707 AUCHAN, registered on January 19, 2007, in Classes 35, 38.

The Complainant has registered many domain names containing the element “auchan” (approximately 600 “auchan” domain names with different generic top-level domain names (“gTLDs”).

The disputed domain name was registered on July 5, 2022.

At the time the Complaint was filed, the disputed domain name resolved to a website containing a number of pay-per-click (“PPC”) links for “related searches” such as “Shopping Delivery Job” or “Shopping Online Grocery”.

Furthermore, the Complainant has provided evidence of an exchange of emails between a person who was claiming to be “Purchasing Manager” at “Auchan Distribution France” and another individual. The disputed domain name was used in connection with the email address “[...]@auchandistribution.com”.

5. Parties’ Contentions

A. Complainant

The Complainant submits the following arguments:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant is the owner of various AUCHAN trademarks.

The Respondent has added the descriptive term “distribution” to that trademark. The added term is closely linked and associated with the Complainant’s trademark, as the Complainant is one of the world’s top retail and distribution groups.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant. Nor has the Complainant given the Respondent permission to use the Complainant’s trademarks in any manner, including domain names. The Respondent is further not commonly known by the disputed domain name. The Respondent’s name “Steve Konan” does not resemble the disputed domain name. Furthermore, the Respondent was using a privacy Whois service at the time of the filing of the Complaint. The disputed domain name has been used to facilitate email phishing attacks, targeting clients of the Complainant. Thereby, the email address “[...]@auchandistribution.com”, the Complainant’s trademarked logo and official address were used. Moreover, the Respondent is using the disputed domain name to redirect Internet users to a website with links to third party websites (partly of competitors of the Complainant).

Third, the disputed domain name was registered and is being used in bad faith. The Complainant and its AUCHAN registrations are internationally known. Its use dates back to the year 1961. By registering a domain name incorporating both the Complainant’s trademark and the term “distribution” the Respondent has shown knowledge of the Complainant’s brand and business. The same is true for the Respondent’s phishing activities. With all this, the Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant’s trademarks. Further, the Respondent, at the time of filing of the Complaint, had employed a privacy service to hide its identity.

B. Respondent

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

6. Discussion and Findings

According to the Policy, to qualify for a cancellation or transfer, the Complainant must prove each of the following:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Third, the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not submit a reply, the Panel may choose to accept the reasonable contentions of the Complainant as true. This Panel will determine whether those facts constitute a violation of the Policy that is sufficient to order the transfer of the disputed domain name (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has registered trademark rights in the designation AUCHAN. At least one of the Complainant’s registrations is the word mark AUCHAN (International trademark No. 625533). The other registrations are word/device marks but the word element AUCHAN is always predominant. The fact that some of the registrations are held by affiliates of the Complainant does not harm. A trademark owner’s affiliate is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint (section 1.4.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The disputed domain name comprises the trademark AUCHAN in its entirety. The addition of the term “distribution” to the trademark does not suffice to prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademarks (see section 1.8 of the [WIPO Overview 3.0](#)).

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

According to Paragraph 4(c) of the Policy, the following are examples for circumstances where a respondent may have rights to or legitimate interests in a domain name: (i) before any notice to the respondent of the dispute, the use by the respondent 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent 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.

In the absence of any evidence filed by the Respondent, the Panel does not see any indications for any of the above examples, or any other circumstances suggesting that the Respondent may have rights or legitimate interests in the disputed domain name, being given. The Respondent’s name is “Steve Konan” and there are no indications that “Steve Konan” is in any way legitimately linked to the business that the Complainant and its affiliates run under the AUCHAN brand. The screenshot of the website accessible via the disputed domain name does not suggest any such link either. On the other hand, due to the fact that the AUCHAN trademark has prominently and intensively been used on the market internationally and for decades by the Complainant and its group companies, the Panel is inclined to assume that the Respondent was well aware the Complainant’s trademark when it registered the disputed domain name. The addition of the term “distribution”, which is very close to the Complainant’s business activities further adds to the conclusion that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Moreover, panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users (see section 2.9 of the [WIPO Overview 3.0](#)).

Additionally, since the disputed domain name consists of the trademark AUCHAN plus the additional term “distribution” related to its services, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Hence, the second element of the Policy is also fulfilled.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith: (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

Circumstances (i) to (iii) do not seem to be relevant for the present case. Therefore, the focus can be on (iv) and on the question whether the Respondent is intentionally attempting to attract, for commercial gain, users to its website.

The Complainant submits as evidence a screenshot of the website accessible under the disputed domain name showing a number of links to related searches. The Complainant submits that these are PPC links.

Furthermore, the Complainant bases its case on fraudulent exchange of emails. One of the persons involved uses (i) the email address “[...]@auchandistribution.com”, which is technically dependent on and linked to the disputed domain name, (ii) the name “Auchan Distribution France” and (iii) the address of the headquarter of Auchan in the signature line. According to the Complainant, these emails are only purporting to originate from a senior employee from the Complainant’s business. Due to the lack of response by the Respondent, and in view of the fact the disputed domain name is part of the corresponding email address, the Panel has no reason to assume that that individual is in fact a real employee of the Complainant, or at the very least, that he was involved in those email communications. In view of this, and despite of the fact that the chain of emails the Panel is convinced by the Complainant’s submission that the disputed domain name is used as part of a phishing scheme. Such use will always be use in bad faith (see *Gannett Co, Inc. v. Privacy Service Provided by Withheld for Privacy efh / Sameul Sanders, Sam LCC*, WIPO Case No. [D2022-1233](#)).

The Panel’s conclusion that the disputed domain name was registered and used in bad faith is further supported by the fact that the Respondent has chosen a domain name that consists of a widely-known trademark which is combined with a descriptive term that refers to the business activities of the owner of the widely-known trademark (*i.e.*, the Complainant).

Therefore, the third element of the Policy has also 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 <auchandistribution.com> be transferred to the Complainant.

/Roger Staub/

Roger Staub

Sole Panelist

Date: February 15, 2023