

## **ADMINISTRATIVE PANEL DECISION**

### **ELO v. Marc felix and Kyle Cutiepatotieeee**

### **Case No. D2023-0060**

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

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

The Respondents are Marc felix, France, and Kyle Cutiepatotieeee, United States of America (“United States”).

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

The disputed domain names <auchan-groupeu.com>, <auchangroupeu.com>, and <auchan-groupeu.com> (the “Domain Names”) are 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 January 5, 2023. On January 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On January 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 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 10, 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 Respondents of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on February 3, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on February 16, 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, formerly known as Auchan Holding SA, is the trade mark owner of the AUCHAN trade marks used by Auchan Retail - a multinational retail group headquartered in Croix, France. Founded in 1960, Auchan Retail is the 11th largest food retailer in the world, operating in 12 countries, across Europe and Africa. In addition, with 163,098 employees worldwide, it is also the 32nd largest employer in the world. As of December 2021, its consolidated revenue, excluding taxes, was in excess of EUR 30 billion. The Complainant's AUCHAN mark has been recognised as well-known by prior UDRP panels (*e.g. ELO v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Patrice Joubert*, WIPO Case No. [D2022-1029](#)).

The Complainant owns numerous trade mark registrations for its AUCHAN mark in numerous jurisdictions, including in the following jurisdictions corresponding to those of the Respondents:

- French trade mark registration no. 1244726 AUCHAN (semi-figurative) in classes 1 to 45, with registration date September 9, 1983;
- International Trade Mark Registration no. 625533 AUCHAN (word) in classes 1 to 42 with registration date October 19, 1994, designating the United States.

Two of the Domain Names <auchan-groupeu.com> and <auchan-groupeu.com> were registered on August 28, 2022. The former does not resolve to any website and the latter resolves to a parking page indicating that a website is forthcoming. The Domain Name <auchangroupeu.com> was registered on August 18, 2022 and resolves to a parking page indicating "Welcome to the home of auchangroupeu.com. To change this page, upload your website into the public\_html directory".

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

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

The Complainant contends that the Domain Names are confusingly similar to its AUCHAN mark, that the Respondents have no rights or legitimate interests in the Domain Names, and the Domain Names were registered and used in bad faith under the doctrine of passive holding in light of the renown of the Complainant's mark.

The Complainant argues that the Domain Names are subject to common control and the Complaint should be allowed to proceed against the consolidated Respondents.

##### **B. Respondent**

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

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

##### **6.1. Preliminary Matter: Consolidation of the Complaint against Multiple Respondents**

The Panel concludes that the Domain Names are subject to common control for the following reasons:

- a) The Domain Names share the same registrar, nameservers, and hosting provider;
- b) The Domain Names were registered within ten days of each other;

- c) All three Domain Names are parked, and two of them, <auchan-groupeu.com> and <auchangroupeu.com>, nominally owned by different registrants, use the same web control panel provider;
- d) All three Domain Names adopt a similar composition where the Complainant's well-known trade mark is incorporated as the first element, with the terms "group(s)" and "eu" added thereafter; and
- e) As discussed below in relation to bad faith, at least one of the Respondent's names appears to be falsified, and the Respondents' addresses in the Whois records for the Domain Names are such that it is probable that they do not reflect the Respondents' true locations.

The Panel considers consolidation fair and equitable as the Respondents have been given a chance to reply to the Complaint and to the Complainant's request for consolidation, which they have not taken up, and procedural efficiency justifies consolidation (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.11.2). Therefore, the Panel accepts the Complainant's request for consolidation.

## 6.2. Substantive Matters

### A. Identical or Confusingly Similar

The Complainant's registered and well-known AUCHAN mark is wholly contained within the Domain Names and is not obscured by the addition of the remaining terms. Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (including generic terms) does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#) at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its AUCHAN mark was registered and well-known, including in the Respondents' countries, long prior to registration of the Domain Names. The Domain Names are confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Names are unauthorised by it.

The Respondents have provided no explanation as to why they chose the Domain Names. There is no generic meaning or other semantic value to the Complainant's mark, which is wholly contained within the Domain Names, which the Respondents might, in good faith, have sought to adopt. The only use of two of the Domain Names is for a parking page, which does not constitute a *bona fide* offering of goods or services or any legitimate noncommercial or fair use (*Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). The remaining Domain Name does not resolve to an active website at all.

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

### C. Registered and Used in Bad Faith

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

Internet searches for the Complainant's well-known mark, which is wholly contained within the Domain Names as their first element, overwhelmingly relate to the Complainant. The Complainant's mark is not a dictionary term, has no generic meaning and is highly specific to the Complainant. The composition of the

Domain Names clearly suggests an affiliation with the Complainant; the Domain Names all contain the terms “group(s)” and “eu” and the Complainant is a well-known retail group in the European Union. It is thus not possible to conceive of any plausible actual or contemplated active use of the Domain Names by the Respondents that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trade mark law (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The second Respondent’s name, in particular the surname “Cutiepatotieeee”, is unlikely and probably falsified. The Respondents’ addresses in the WhoIs records for the Domain Names are such that it is probable that they do not reflect the Respondents’ true locations; one address is for a government office in the United States and the other is for a hotel chain in France. The Respondents failed to respond to the Complaint and used a privacy service to obscure their identities. These are all further indicators of bad faith in the circumstances of this case ([WIPO Overview 3.0](#) at section 3.2.1).

The fact that the Domain Names appear to have been parked does not prevent a finding of bad faith under the doctrine of passive holding; all the factors that panels typically consider under that doctrine favour the Complainant ([WIPO Overview 3.0](#) at section 3.3).

The Complainant has satisfied 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 Domain Names, <auchan-groupeu.com>, <auchangroupeu.com>, and <auchan-groupseu.com>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: February 24, 2023