

ADMINISTRATIVE PANEL DECISION

ELO v. Kane Anabel
Case No. D2023-0068

1. The Parties

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

The Respondent is Kane Anabel, France.

2. The Domain Name and Registrar

The disputed domain name <auchan-eu.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 January 6, 2023. On January 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 7, 2023, 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 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 11, 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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 3, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on February 21, 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 a historic French retailer. With over 160.000 employees, it operates supermarkets in 12 countries, in Europe and Africa, and is ranked 11th largest food retailing group in the world. As of December 2020, its consolidated revenue, excluding taxes, exceeded EUR 30 billion.

As a basis for its Complaint, the Complainant relies in particular on international trade marks AUCHAN No. 284616 of June 5, 1964 and No. 625533 of October 19, 1994.

The Complainant also owns hundreds of domain names containing the element AUCHAN, including <auchan-retail.com> and <auchan.fr>.

The disputed domain name was registered on August 1, 2022. In the course of this proceeding the Registrar disclosed the identity of the Respondent, an individual with an alleged address in Paris, France.

The disputed domain name resolves to a page which is not active.

However, the disputed domain name was used to create an email address which is used to send messages to potential suppliers. Annexed to the Complaint are a set of email exchanges with a potential supplier of the Complainant, regarding a possible order and its payment. In these emails, the Respondent impersonates an alleged purchase manager of the Complainant, and uses the authentic contact details of the Complainant, such as its address, VAT number and company registration number.

5. Parties' Contentions

A. Complainant

The Complainant's arguments in support of its Complaint can be summarized as follows:

First, it claims that the disputed domain name is confusingly similar to the Complainant's trade marks AUCHAN. It states in particular that the "Respondent has added a hyphen and the geographical designation "EU" to Complainant's AUCHAN trade mark, thereby making the Disputed Domain Name confusingly similar to Complainant's trade mark."

Second, it indicates that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not sponsored or affiliated with the Complainant in any way, and was not given permission to use the Complainant's trade marks in any manner. Also, the Complainant states that the Respondent is not commonly known by the disputed domain name: In fact, the name of the Respondent, as disclosed by the Registrar, does not resemble the disputed domain name in any manner. The Complainant also refers to the fraudulent phishing activities of the Respondent and indicates that "By sending emails from the Disputed Domain Name, Respondent is attempting to pass itself off as the Complainant, which provides evidence of Respondent's lack of legitimate interests or rights in the Disputed Domain Name (...) This use of the Disputed Domain Name, presumably for commercial gain, and with devious, nefarious motives, clearly fails to constitute a *bona fide* offering of goods or services". Finally, the Complainant refers to the lack of use of the disputed domain name, which resolves to a blank page. This, claims the Complainant, shows a lack of attempt to make a legitimate use of the disputed domain name.

Third, the Complainant claims that the disputed domain name was registered and used in bad faith. It highlights that its trade mark AUCHAN is well-known worldwide, and that the Respondent has positively demonstrated a knowledge and significant familiarity with its brands and business. The operation by the Respondent of the phishing scam, described above, shows that the disputed domain name is used in bad faith. Also, according to the Complainant, the insertion of the geographical reference “eu” in the disputed domain name is an additional *indicium* of bad faith, as it refers to the territory where the Complainant has the strongest commercial presence. Finally, the Complainant claims the benefit of the doctrine on bad faith passive holding, as the disputed domain name resolves to a webpage which is blank.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is confusingly similar to a trade mark or a service mark in which it has rights. Under the case law of the UDRP, this is primarily a standing requirement.

The Complainant owns several trade mark rights over the sign AUCHAN. This trade mark is fully reproduced, and perfectly identifiable, in the disputed domain name. The addition of the initials “eu”, after a hyphen, does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”): “Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

The disputed domain name is therefore confusingly similar to the trade marks of the Complainant.

The Complainant is deemed to have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has satisfied its burden of evidence here: it has argued that it does not know the Respondent, is not linked to the Respondent, and that to its knowledge the Respondent has no rights or legitimate interests in the disputed domain name. Besides, the disputed domain name is not used in

connection with a *bona fide* offering of goods or services. On the contrary, the use by the Respondent of a phishing scheme demonstrates a lack of rights or legitimate interests.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location.

It is undisputable that the Respondent has registered, and is using, the disputed domain name in bad faith.

On the one side, the Respondent had the Complainant's trade mark in mind when it registered the disputed domain name. Indeed, the disputed domain name not only reproduces the trade mark AUCHAN; it also contains the initials "eu", commonly used as an abbreviation for "European Union", where the Complainant has its strongest commercial presence.

On the other side, the Respondent operates a phishing scheme to the detriment of the Complainant and of the third parties with which it established contacts. By using a misleading email address, in which the Respondent has reproduced the trade mark and full data of the Complainant, in order to impersonate it, the Respondent lured potential providers and attracted them for its commercial gain.

Finally, the Panel notes, further to a limited factual research, that the address provided for the Respondent by the Registrar when registering the disputed domain name does not exist. The Respondent has provided false contact details in order to avoid pursuits linked to its fraudulent activities, and this amounts also to bad faith.

Accordingly, the third criteria set out in paragraph 4(a) of the Policy is also satisfied and the Complaint succeeds.

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, <auchan-eu.com>, be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: March 2, 2023