

ADMINISTRATIVE PANEL DECISION

ELO v. bi clement tra, autres

Case No. D2023-1037

1. The Parties

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

The Respondent is bi clement tra, autres, Côte d'Ivoire.

2. The Domain Name and Registrar

The disputed domain name <au-chan.com> is registered with OVH (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 10, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 10, 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 (REDACTED FOR PRIVACY, autres) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 23, 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 March 24, 2023.

On March 23, 2023, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On March 24, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 April 5, 2023. In accordance with the Rules, paragraph 5,

the due date for Response was April 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 4, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on May 11, 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 a French company, founded in 1960, which has grown internationally to become one of the largest food retailers in the world, operating in 12 countries across Europe and Africa. The Complainant was formerly known as Auchan Holding SA.

The company was named after the "Hauts Champs" neighborhood in Roubaix where the Complainant opened its first shop. The former company name and trademark AUCHAN is therefore a direct reference to the company's history and origin.

The trademark AUCHAN is widely used and promoted.

The Complainant owns a large portfolio of registered trademarks containing the trademark AUCHAN, including, *inter alia*, the International trademark registration No. 284616, registered on June 5, 1964, and the European Union Trade Marks No. 000283101, registered on August 19, 2005, and No. 004510707, registered on January 19, 2007 (together hereinafter referred to as "the Mark").

It also owns over 600 domain names, including the <auchan.fr> domain name, registered on February 10, 1997, and the <auchan-retail.com> domain name, registered on October 27, 2015, both directing to the Complainant's official website.

The disputed domain name, <au-chan.com>, was registered on September 10, 2022. It refers to a webpage of the Registrar indicating that the website is under construction.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its trademark AUCHAN, because the disputed domain name consists of the Mark with a hyphen placed in between the syllables. The generic Top-Level Domain ("gTLD") should not be considered.

The Complainant further alleges that the Respondent has no rights or legitimate interest in the disputed domain name, because it uses the trademark AUCHAN on which the Complainant has exclusive rights. The Respondent is not sponsored or affiliated by the Complainant and no authorization of any kind was given to the Respondent to use the trademark AUCHAN. In addition, the Respondent is not known by the disputed domain name and used a privacy Whois service for its registration, registration which intervened long after the registration of the well-known trademark AUCHAN by the Complainant. The absence of use of the disputed domain name is another indication of lack of interest in the disputed domain name.

The Complainant is of the opinion that the disputed domain name has been registered and used in bad faith. Indeed, considering the reputation of the trademark AUCHAN, the Respondent knew or should have known of its registration on behalf of the Complainant. As a matter of fact, the trademark AUCHAN is not only registered as a trademark and domain name by the Complainant, but it is also widely used, including on the Internet. The passive use of the disputed domain name is an indication of bad faith use. Additionally, the

disputed domain name incorporates the trademark AUCHAN in entirety and must thus have been chosen in order to cause confusion among Internet users as to its source. The Respondent has also ignored the warning letters sent by the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Language of the proceedings

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

Paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

In the present case, the Complainant has evidenced to have sent warning letters in English to the Respondent who never answered nor indicated that correspondence should be held in French. The Respondent did also not react to the emails sent by the Center regarding the language of the proceedings which were notified both in English and French. See section 4.5.1. of the WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Under the circumstances, ordering a translation of the Complaint into French would delay the proceedings to the disadvantage of the Complainant and the Panel confirms that English shall be the language of the proceedings.

B. Identical or Confusingly Similar

The Complainant has shown to have obtained trademark rights in AUCHAN in many jurisdictions.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed

domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark AUCHAN. Indeed, the Complainant's trademark is clearly recognizable even if a hyphen separates "au" from "chan" which is most likely due to an intentional misspelling. See section 1.9 of the [WIPO Overview 3.0](#).

Furthermore, the gTLD ".com" is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient statements in order to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark. There is no evidence showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name, being reminded that the disputed domain name is inactive.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in the proceeding.

As already stated before, nothing is contained in the case file which would show that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name or that the Respondent has any rights or legitimate interests in the disputed domain name. Furthermore, even if the disputed domain name refers to a standard webpage of the Registrar mentioning that a site is under construction, there are no indications and there is no evidence in the case file indicating that the Respondent would actually be preparing to use the disputed domain name in any way whatsoever. The Respondent did not respond to the

warning letters of the Complainant rather shows the Respondent's lack of rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 holder's documented out-of-pocket costs directly related to the domain name; or
- (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 holder has engaged in a pattern of such conduct; or
- (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 the holder's 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 holder's respondent's website or location or of a product or service on the holder's respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's trademark AUCHAN which is widely used by the Complainant, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name was registered to attract Internet users by creating likelihood of confusion with the Complainant's trademark.

The Panel therefore finds that the disputed domain names were registered in bad faith.

The disputed domain name currently resolves to an inactive website.

It has been established in many UDRP cases that passive holding under the appropriate circumstances falls within the concept of a domain name being used in bad faith. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain name will be considered to be in bad faith : "[w]hile panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false

contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademarks of the Complainant are widely used and well known. The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible.

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy are fulfilled in relation to the disputed domain name.

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, <au-chan.com> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: June 5, 2023