

## **ADMINISTRATIVE PANEL DECISION**

ELO v. Armel Dupont  
Case No. D2023-2257

### **1. The Parties**

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

The Respondent is Armel Dupont, France.

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

The disputed domain name <hypermarchesauchan.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 May 24, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 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, Registrant Organization: Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 June 7, 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 June 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 16, 2023.

The Center appointed Elise Dufour as the sole panelist in this matter on August 4, 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, previously known as Auchan Holding SA, a multinational retail group headquartered in France, founded in 1960, and operating in 12 countries, across Europe and Africa. With 163,098 employees worldwide, the Complainant is 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 owns several trademark registrations including the following:

- European Union trademark AUCHAN & Device, n° 004510707, registered on January 19, 2007, duly renewed and designating services in international classes 35 and 38.
- International trademark AUCHAN, n° 284616, registered on June 5, 1964, duly renewed and designating goods in international classes 03, 09, 11, 25, 29 and 32.
- International trademark AUCHAN, n° 1011777, registered on February 19, 2009, duly renewed, and designating goods and services in international classes 01 to 45.
- French trademark AUCHAN n° 1244726, registered on September 9, 1983, duly renewed and designating goods and services in international classes 01 to 45.

The Complainant also owns numerous domain names that contain the trademark AUCHAN, including notably the following ones:

- <auchan.fr> registered on February 11, 1997.
- <auchan-retail.com> registered on October 27, 2015.

The disputed domain name was registered on January 17, 2023.

According to evidence submitted by the Complainant, the disputed domain name does not resolve to any active website.

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

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

The Complainant claims that the disputed domain name is (i) confusingly similar to its earlier trademarks, (ii) that the Respondent has no rights or legitimate interests in the disputed domain name, and (iii) that the disputed domain name has been registered and is being used in bad faith.

(i) The Complainant claims that the disputed domain name is highly confusingly similar to its trademarks, since the disputed domain name reproduces its AUCHAN trademarks together with the generic term "hypermarches". For the Complainant, the choice of the term "hypermarches" is closely linked and associated with Complainant's brand and trademark which only serves to underscore and increase the confusing similarity between the disputed domain name and the Complainant's trademarks.

(ii) The Complainant states that 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 in any way, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark AUCHAN, the

Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests. Finally, the Respondent is using the disputed domain name to direct Internet users to a website that resolves to a blank page and lacks content. Consequently, for the Complainant, the Respondent has not demonstrated any attempt to make legitimate use of the domain name and website, which evinces a lack of rights or legitimate interests in the disputed domain name.

(iii) Due to the strong reputation and well-known character of the Complainant and its trademarks, the Complainant considers that the Respondent could not have ignored the existence of the Complainant's trademarks at the time the disputed domain name was registered. For the Complainant, the fact that the disputed domain name incorporates the entirety of Complainant's famous AUCHAN trademark along with the related term "hypermarches", defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks. The Complainant also claims that the Respondent's use of the disputed domain name is made in bad faith, as it aims to cause confusion among Internet users as to the source of the disputed domain name. Furthermore, the Complainant claims that the use of a privacy service by the Respondent, in order to hide its identity is an additional indication of bad faith.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

In the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

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 to 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.

The Panel will further analyze the potential concurrence of the above circumstances.

### **A. Identical or Confusingly Similar**

The Complainant submitted evidence, which incontestably and conclusively establishes rights on AUCHAN trademarks.

The disputed domain name wholly incorporates the Complainant's trademark AUCHAN, which, as it has been long established by previous UDRP panels, is sufficient to determine that a disputed domain name is identical or confusingly similar to the Complainant's trademarks.

The Respondent has added the term "hypermarches" to the disputed domain name, and the Panel finds that the addition of the term "hypermarches" does not prevent a finding of confusing similarity.

Thus, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks and that the requirement of paragraph 4(a)(i) of the Policy is met.

## **B. Rights or Legitimate Interests**

The burden of proof is on the Complainant to demonstrate a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a *prima facie* case, the burden of production then shifts to the Respondent, which has to then demonstrate rights or legitimate interests in the disputed domain name.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant further contends that the Respondent is not known under the disputed domain name, does not own any rights in the name "Hypermarches Auchan" and does not make any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name does not resolve towards an active web page with substantive content.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

The Complainant and its AUCHAN trademarks are very well known, with trademark registrations across a number of countries.

To this is added the fact that AUCHAN is not a common word, and the Respondent has added the term "hypermarches" referring to the Complainant's activity (being it a term in French, language of the Complainant's country of origin).

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the AUCHAN trademarks at the time the Respondent registered the disputed domain name.

In addition, the Panel notes that when registered the disputed domain name the Respondent used a privacy service. As previous UDRP panels established, under certain circumstances, such use of privacy services can be an indication of the Respondent bad faith. Given the elements of the present case, the Panel considers that the Respondent's use of privacy services is an indication of the Respondent's bad faith.

As per the use in bad faith, the Panel notes that passive holding of the disputed domain name does not prevent a finding of bad faith. The Panel considers that the only feasible explanation for the Respondent's registration of the disputed domain name including the Complainant's well-known trademark together with the descriptive terms "hypermarches" is that the Respondent intends to take an unfair advantage of the confusing similarity with the Complainant's trademark, or to cause confusion, mistake and deception by means of the disputed domain name.

Finally, the Panel considers the Respondent failure to file a response in the circumstances of this case further affirms the Panel's finding of bad faith.

The Panel finds that the Complainant successfully fulfilled the requirements of paragraph 4(a)(iii).

## 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, <hypermarchesauchan.com> be transferred to the Complainant.

*/Elise Dufour/*

**Elise Dufour**

Sole Panelist

Date: August 16, 2023