

ADMINISTRATIVE PANEL DECISION

ELO v. Dominique Seng
Case No. D2023-2403

1. The Parties

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

The Respondent is Dominique Seng, France.

2. The Domain Name and Registrar

The disputed domain name <elo-holding.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Redacted for Privacy, 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 9, 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 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2023. On July 17, 2023, the Complainant submitted additional evidence of the use of the Disputed Domain Name.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on July 20, 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 following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant was previously known as Auchan Holding and it changed its name to ELO further to a decision of the general meeting of shareholders of March 11, 2021. The Complainant is a holding company consisting of three independent companies namely (i) Auchan Retail International, (ii) New Immo Holding and (iii) Oney, specialized respectively in supermarkets and online retail, real estate development and management and, financial services including consumer credit and electronic payments.

The Complainant is the owner of the following trade mark registrations in the term ELO:

- French Trade Mark ELO No. 95570588, filed on May 5, 1995 and registered in classes 5, 7, 8, 9, 16, 21, 28, 35, 36, 38, 40, 41, 42, 43, 44 and 45.
- International Trade Mark ELO No. 647375, filed and registered on November 3, 1995 in classes 1 to 24 and 26 to 42.

The Complainant is also the owner of the domain name <groupe-elo.com>.

The Domain Name was registered on January 6, 2023, and used to resolve to a Registrar parking page with pay-per-click ("PPC") links. The Domain Name was also used to send fraudulent emails impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the ELO trade mark in which the Complainant has rights as the Domain Name incorporates the exact ELO trade mark with the addition of an hyphen "-" and the term "holding" and that this does not prevent the likelihood of confusion between the Domain Name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant contends that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant represents that it has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trade mark. In addition, the Complainant asserts that the Respondent is not commonly known by the Domain Name. The Complainant also submits that the use of the Domain Name to facilitate fraudulent activities and impersonate the Complainant and to direct Internet users to a parking page with PPC links cannot be considered *bona fide*, legitimate or fair.

The Complainant contends that the Respondent has registered the Domain Name with full knowledge of the Complainant's trade mark. The Complainant points to the fact that the results of an Internet search for the terms "elo holding" refer to the Complainant. The Complainant also alleges that the Respondent is using the Domain Name in bad faith as the Complainant provided evidence showing that the Domain Name was used to send fraudulent emails impersonating the Complainant. In addition, the Complainant points to the fact that the use of the Domain Name to host PPC advertising is a further circumstance demonstrating that the

Domain Name is being used in bad faith. The Complainant thus considers that the Domain Name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that 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.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in ELO, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark ELO in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's ELO trade mark with the addition of an hyphen "-" and the term "holding". Such addition does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name.

Then there is the addition of the generic Top-Level-Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element of confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] use 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) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark 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 trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark ELO. There is no indication that the Respondent is commonly known by the Domain Name.

Further, the Complainant has provided clear evidence that the Domain Name was used to send fraudulent emails (phishing emails) impersonating the Complainant. As previous panels under the Policy have consistently found, such illegal use can never be considered *bona fide*, legitimate or fair under the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.13.1.

Finally, in light of the present circumstances, the Panel finds that the past use of the Domain Name to point to PPC links redirecting Internet users to third party websites (some of which relate to financial services and credit cards thus in competition with one of the companies forming the Complainant's holding company) cannot constitute a legitimate interest in the Domain Name for the purpose of the Policy.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark 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; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the 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 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 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.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact ELO trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including: (i) the reputation of the Complainant's ELO trade mark in France, where the Respondent is based, (ii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade mark ELO, (iii) the choice of the term "holding" added to ELO in the Domain Name which clearly targets the Complainant and its exact corporate structure and (iv) the fact that all results generated by an Internet search for the terms "elo holding" refer to the Complainant, as the Panel was able to confirm by carrying out such search.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The Domain Name appears to be passively held at the time of the Decision or at least the Panel was not able to access the associated website. Passive use itself would not cure the Respondent's bad faith given the overall circumstances here, specifically the previous use of the Domain Name and the Respondent's default to file a Response.

In any event, the past use of the Domain Name to send phishing emails impersonating the Complainant is very persuasive and clear evidence of the Respondent's bad faith use of the Domain Name and typically the type of use the Policy is designed to tackle.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Finally, in light of the present circumstances, the Panel finds that the past use of the Domain Name to point to PPC links redirecting Internet users to third party websites (some of which relate to financial services and credit cards thus in competition with one of the companies forming the Complainant's holding company) is an attempt to capitalize on the goodwill of the Complainant by misleading Internet users. Even where such targeted PPC links are automatically generated, as may be the case here, previous panels under the Policy have found that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name and the fact that such links are generated by a third party such as a registrar would not by itself prevent a finding of bad faith. See Section 3.5 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

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 Name, <elo-holding.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: August 3, 2023