

ADMINISTRATIVE PANEL DECISION

ELO v. Name Redacted¹

Case No. D2023-2844

1. The Parties

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

The Respondent is Name Redacted.

2. The Domain Name and Registrar

The disputed domain name <groupe-elo.net> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2023. On July 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 5, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 July 16, 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 July 18, 2023. In accordance with the Rules, paragraph 5,

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

the due date for Response was August 7, 2023. On July 24, 2023, the Center received an email from a third-party alleging the identity theft of their client in the registration of the disputed domain name. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 9, 2023.

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

The Complainant was previously known as Auchan Holding SA 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, 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 disputed domain name was registered on April 28, 2023, and does not point to an active website but it was used to create email addresses and facilitate fraudulent activities ("phishing") impersonating the Complainant and one of its employees.

The Respondent has used the contact details of a third party to register the disputed domain name and the third party in question has addressed a letter to the Center through its lawyers and has also filed a complaint with the French authorities.

5. Parties' Contentions

A. Complainant

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

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant represents that is 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 disputed domain name. The Complainant also submits that the use of the disputed domain name to facilitate fraudulent activities ("phishing") targeting clients of the Complainant and to impersonate the Complainant and one of its employees cannot be considered *bona fide*, legitimate or fair.

The Complainant contends that the Respondent has registered the disputed 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 "groupe-elo" refer to the Complainant. The Complainant also alleges that the Respondent is using the disputed domain name in bad faith as the Complainant provided evidence showing that the disputed domain name was used to send fraudulent emails impersonating the Complainant. The Complainant thus considers that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent has used the contact details of a third party to register the disputed domain name and the third party in question has addressed a letter to the Center through its lawyers and has also filed a complaint with the French authorities.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the ELO trade mark is reproduced within the disputed domain name.

Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of another term here, "groupe-", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trade marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Here, the Complainant has stated that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark ELO. In addition, there is no indication that the Respondent is known by the disputed domain name. Further, the use of the disputed domain name to fraudulently impersonate the Complainant cannot qualify as either use of the disputed domain name (or demonstrable plans for such use) with a *bona fide* offering or a legitimate noncommercial fair use.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The disputed 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, (ii) the fact that the disputed domain name was registered relatively recently and many years after the registration of the trade mark ELO, (iii) the choice of the term "groupe-" added before the ELO trade mark in the disputed domain name which clearly targets the Complainant and its corporate structure, (iv) the fact that the disputed domain name is, at the second level, identical to the Complainant's domain name <groupe-elo.com> which corresponds to the Complainant's main website, (v) the use by the Respondent of the contact details of a third party to register the disputed domain name, and (vi) the fact that all results generated by an Internet search for the terms "groupe-elo" refer to the Complainant, as the Panel was able to confirm by carrying out such search.

As for use of the disputed domain name, the past use of the disputed domain name to send phishing emails impersonating the Complainant is very persuasive and clear evidence of the Respondent's bad faith use of the disputed domain name and typically the type of use the Policy is designed to tackle.

On this basis, the Panel finds that, as per paragraph 4(b)(iv) of the Policy, 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.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <groupe-elo.net> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: September 4, 2023