

ADMINISTRATIVE PANEL DECISION

ELO v. Madec Roger
Case No. D2023-3315

1. The Parties

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

The Respondent is Madec Roger, France.

2. The Domain Name and Registrar

The disputed domain name <sas-elofrance.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 August 2, 2023. On August 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 3, 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 August 4, 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 August 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 30, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on September 12, 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, ELO, is a French holding company, formerly known as Auchan Holding SA, which operates in the fields of retail, real estate, and finance. Through its subsidiaries, ELO has business presence in Europe, Asia and Africa and employs over 164,000 employees. It is ranked about the 32nd largest employer in the world. As of December 2021, its consolidated revenue, excluding taxes, exceeded EUR 40 billion.

As a basis for its Complaint, the Complainant relies on the French trade mark ELO No. 95570588 registered on May 5, 1995, and the International Registration ELO No. 647375, registered on November 3, 1995. The disputed domain name <sas-elofrance.com> was registered on March 16, 2023. It resolves to a page which is not active.

However, the disputed domain name was used to create at least one email address which was used to send messages to at least one potential supplier. Annexed to the Complaint is a series 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 head of the purchase department of ELO, 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, the Complainant claims that the disputed domain name is confusingly similar to its trade mark ELO. It points out that "the Disputed Domain Name can be considered as capturing, in its entirety, Complainant's ELO trademark and simply adding the dictionary and geographic terms "sas" (French term for simplified joint-stock company) and "France" to the trademark".

Second, the Complainant indicates that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant in any way, and was not given permission to use the Complainant's trade mark in any manner. The Complainant also states that the Respondent, identified as "Madec Roger", a name which does not resemble the disputed domain name or is commonly known by the disputed domain name.

In addition, referring to the fraudulent phishing activities of the Respondent, the Complainant argues 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, according to the Complainant, shows a lack of attempt to make a legitimate use of the disputed domain name.

Third, the Complainant asserts that it has been using its registered trade mark ELO since 2021, which is well before the Respondent's registration of the disputed domain name on March 16, 2023. In addition, the words added to the trade mark ELO in the disputed domain name ("SAS" and "France") demonstrate a knowledge of, and familiarity with, the Complainant's brand and business. Moreover, the Respondent's use of the disputed domain name in furtherance of a phishing scheme to impersonate the Complainant, further reveals an actual knowledge of the Complainant and its brand. The Complainant states that performing searches across a number of Internet search engines for "sas-elofrance" returns multiple links referencing the Complainant and its business, which proves that the Respondent was or should have been aware of its prior trade mark ELO before registering the disputed domain name.

Finally, the Complainant claims that the disputed domain name currently resolves to an inactive website and is not being used, though past panels have noted that the word bad faith "use" in the context of paragraph 4(a)(iii) does not require a positive act on the part of the Respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy, paragraph 4(a)(iii).

B. Respondent

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

6. Discussion and Findings

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of the probabilities 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.

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. This is primarily a standing requirement.

The Complainant owns trade mark rights over the sign ELO. These trade marks are fully reproduced and perfectly recognizable in the disputed domain name. The addition of the elements "SAS" before a hyphen and "France" attached to the sign ELO, 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 Complainant's trade marks.

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 production of evidence 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; arguing that it does not know the Respondent, it 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 perpetuation of a phishing scheme by the Respondent can never confer rights or legitimate interests (see section 2.13 of the [WIPO Overview 3.0](#)).

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 trademark 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 undeniable here that the Respondent has registered, and is using, the disputed domain name in bad faith.

On the one side, the Respondent necessarily 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 ELO; but also contains the French corporate acronym "SAS" and the country name "France", where the Complainant is based.

On the other side, the Respondent implemented a phishing scheme to the detriment of the Complainant and third parties with whom it has established contacts. By using a misleading email address, in which the Respondent has reproduced the trade mark and some of the Complainant's identification details, in order to impersonate it, the Respondent attracted potential suppliers and attempted to deceive them for commercial gain.

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

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, <sas-elofrance.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: September 26, 2023