

ADMINISTRATIVE PANEL DECISION

ELO v. Chap Marc and Osni Herbert
Case No. D2023-4278

1. The Parties

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

The Respondents are Chap Marc, Côte d'Ivoire and Osni Herbert, Côte d'Ivoire.

2. The Domain Names and Registrar

The disputed domain names <retailauchan.com> and <retailauchan.store> (“the Disputed Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2023. On October 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On October 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names 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 October 17, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the Disputed Domain Names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on October 20, 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 Respondents of the Complaint, and the proceedings commenced on October 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on November 13, 2023.

The Center appointed Mireille Buydens as the sole panelist in this matter on November 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 Complainant was previously known as Auchan Holding SA, a multinational retail group headquartered in France, founded in 1960, and operating in 14 countries. Fortune Global 500 named the Complainant one of the world's largest companies in 2023. The Complainant's main activity is carried out by Auchan Retail International, which operates across Europe and Africa.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for the trademark AUCHAN (“the Trademark”) in several countries, including, *inter alia*:

- the International trademark registration No. 939832, registered on February 27, 2007, for goods and services of classes 1 to 45;
- the European Union trademark registration No. 000283101, registered on August 19, 2005, for goods and services of classes 1 to 42; and
- the European Union trademark registration No. 004510707, registered on January 19, 2007, for goods and services of classes 35 and 38.

The Complainant also owns several domain names, including 31 domain names including “auchan-retail”. It owns *inter alia* the <auchan-retail.com> domain name, registered on October 27, 2015.

The Respondent registered the Disputed Domain Names on January 4, 2023, and September 29, 2023, respectively.

The disputed domain name <retailauchan.com> was used to facilitate email phishing attacks, targeting potential customers. Specifically, the disputed domain name <retailauchan.com> was used to send out email communications via “xxxxx@retailauchan.com”, purporting to originate from the Head of Purchasing of Auchan Retail, to obtain sensitive personal information whilst offering false business deals and customer accounts. Besides, the Respondents were using both Disputed Domain Names to direct Internet users to websites featuring links to third-party websites, some of which directly compete with the Complainant's business. At the date of the present decision, the Panel found that the first disputed domain name <retailauchan.com> gave no result, whilst the second disputed domain name <retailauchan.store> directs Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

First, the Complainant asserts that it owns registrations for the Trademark. The Complainant considers that the Disputed Domain Names are confusingly similar to the Complainant's Trademark as they both include the Complainant's Trademark with the descriptive term “retail”. The Complainant has been in the retail business for 55 years and currently operates from its official website at “www.auchan-retail.com”. The generic Top Level Domain (“gTLD”) of the first disputed domain name <retailauchan.com> is “.com” and the gTLD of the second disputed domain name <retailauchan.store> is “.store”. It is standard practice when comparing a disputed domain name to a complainant's trademarks, to disregard the gTLD.

Second, the Complainant asserts that the Respondents lack a right or a legitimate interest in the Disputed Domain Names. The Respondents are not sponsored by or affiliated with the Complainant in any way. Nor has the Complainant given the Respondents permission to use the Complainant's Trademark in any manner, including in the Disputed Domain Names. The Respondents are not commonly known by the Disputed Domain Names. The first disputed domain name <retailauchan.com> was used to facilitate email phishing attacks, which does not constitute a *bona fide* offering of goods or services. The Respondents are using both Disputed Domain Names to direct Internet users to websites featuring links to third-party websites, some of which directly compete with the Complainant's business.

Third, the Complainant asserts that the Disputed Domain Names were registered and are being used in bad faith. The Complainant submits that the Complainant and its Trademark (which predates the registration of the Disputed Domain Names) are so widely well-known that it is inconceivable that the Respondents ignored the Complainant and its earlier rights. As the Disputed Domain Names comprise the entirety of the Complainant's Trademark with the addition of the term "retail", these Disputed Domain Names are confusingly similar to the Complainant's Trademark. Moreover, the Respondent's use of the disputed domain name <retailauchan.com> in furtherance of a phishing scheme to impersonate the Complainant is clear evidence of bad faith registration and use of this disputed domain name. By registering the Disputed Domain Names that incorporate the Complainant's Trademark, the Respondents have registered and are using the Disputed Domain Names to mislead Internet users as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Names, which demonstrates the Respondents' intent to capitalize on the goodwill of the Complainant's Trademark to increase traffic to the Disputed Domain Names' websites for the Respondents' pecuniary gain. Besides, the Complainant further notes that the Respondents have employed a privacy service to hide their identity.

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or they are under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 4.11.2.

As regards common control, the Panel notes that the Disputed Domain Names are under common control for the following reasons: (a) according to the Center's Notice of Change, underlying registrants both are located in Abidjan, Côte d'Ivoire; (b) the Disputed Domain Names are identical, only the gTLD differs; (c) both Disputed Domain Names resolve to websites featuring pay-per-click links related to the Complainant's goods and services; and (d) the Disputed Domain Names were registered through the same registrar, Namecheap Inc, using a privacy service.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

Policy Requirements

Dealing with the Respondent’s failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the Disputed Domain Names are 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 Names have been registered and are being used in bad faith.

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 trademark and the disputed domain name ([WIPO Overview 3.0](#), section 1.7).

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

The Panel finds the entirety of the Trademark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the Trademark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.7.)

Although the addition of other terms, here “retail”, may bear on the 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 Names and the Trademark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.8.)

The generic Top-Level Domains “.store” and “.com” are a standard registration requirement and do not prevent the Disputed Domain Names from being confusingly similar to the Trademark ([WIPO Overview 3.0](#), section 1.11.1).

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.

Although 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 difficult 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 domain name (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. 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 Names such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent would be commonly known under the Disputed Domain Names, nor is there any evidence of use or demonstrable plans to use the Disputed Domain Names for a *bona fide* offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the Disputed Domain Names, either.

The Panel notes that the composition of the Disputed Domain Names carries a high risk of implied affiliation with the Complainant (see [WIPO Overview 3.0](#), section 2.5.1). The composition of the Disputed Domain Names, adding the descriptive term “retail” to the Complainant’s Trademark along with the gTLDs “.store” or “.com”, coupled with the use of the Disputed Domain Names to resolve to a website that displays PPC hyperlinks to other companies, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the Disputed Domain Names and the Complainant’s Trademark. This confirms that there is no use, nor preparations to use, of the Disputed Domain Names in connection with a *bona fide* offering of goods or services.

The Panel also notes that the first disputed domain name <retailauchan.com> was also used to facilitate email phishing attacks, which does not constitute a *bona fide* offering of goods or services. Panels have held that the use of a domain name for illegal activity, here claimed phishing, 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.

In the present case, the Panel notes that, given that the Disputed Domain Names incorporate the Complainant’s well-known Trademark which predates the registration of the Disputed Domain Names, with the addition of the term “retail” which is descriptive in the retail sector where the Complainant is active, the Respondent was more likely than not aware of the Complainant’s Trademark at the time of the registration of the Disputed Domain Names ([WIPO Overview 3.0](#), section 3.1.4). The Panel also notes that the Complainant’s main activity is carried out by Auchan Retail International, which operates *inter alia* in Africa, where the Respondent is located. This confirms that it is likely that the Respondent was aware of the Complainant’s use of the Trademark.

The Respondent's use of the Disputed Domain Names to redirect to pay-per-click websites, displaying links to third-party websites including competitors of the Complainant, supports a finding of bad faith registration and use ([WIPO Overview 3.0](#), section 3.5). Besides, the composition of the Disputed Domain Names (the Trademark and the descriptive term "retail") combined with the gTLDs ".store" or ".org", falsely suggests that Internet users will find a website affiliated with the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant, which is a well-known company in the field of retail and thereby attracts Internet users and inspires confidence. The Panel concludes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Trademark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith ([WIPO Overview 3.0](#), section 3.2.1.) Panels have held that the use of a domain name for illegal activity, here, claimed phishing, constitutes bad faith ([WIPO Overview 3.0](#), section 3.4.) In the present case, the Respondent's use of the disputed domain name <retailauchan.com> in furtherance of a phishing scheme to impersonate the Complainant is a clear evidence of bad faith registration and use of this Disputed Domain Name.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Names constitutes bad faith under the Policy.

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

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 Names <retailauchan.com> and <retailauchan.store> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: December 5, 2023