

ADMINISTRATIVE PANEL DECISION

ELO v. Gene Brice Christian
Case No. D2024-1743

1. The Parties

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

The Respondent is Gene Brice Christian, United Kingdom ("UK").

2. The Domain Name and Registrar

The disputed domain name <auchan-retailgroup.com> is registered with One.com A/S (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 24, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2024, 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) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 3, 2024, 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 May 8, 2024.

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 May 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 31, 2024.

The Center appointed Lorenz Ehrler as the sole panelist in this matter on June 6, 2024. 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 holding company that owns, among other companies, Auchan Retail International along with its trademark portfolio. Auchan Retail International, as its name suggests, is a multinational retail group. It operates in 12 countries and employs over 160.000 staff.

The Complainant owns numerous trademarks, in particular:

- UK trademark AUCHAN (fig.), registration No. UK00900283101, filed on May 31, 1996, registered on August 19, 2005;
- European Union trademark AUCHAN (fig.), registration No. 000283101, filed on May 31, 1996, registered on August 19, 2005;
- International trademark AUCHAN, registration No. 952847, registered on August 10, 2007 and designating in particular the United States of America, Australia and countries in the Middle East.

The Complainant also registered different domain names, in particular <auchan.fr>, <auchan-retail.fr>, <auchan-retail.com>, which resolve to the Auchan group's main website or to regional websites, respectively.

The disputed domain name was registered on March 24, 2024. It redirected Internet users to the official website of Auchan Retail International at "www.auchan-retail.com", before becoming inactive following an intervention by the Complainant.

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 name.

Furthermore, the Complainant states that the Respondent is not affiliated with them and that no license has been granted to the Respondent to use the Complainant's trademark. Also, the Respondent does not use the disputed domain name for any fair use.

Lastly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other elements, here a hyphen and "retailgroup", 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Furthermore, the Panel notes that the nature of the disputed domain name along with the content of the website (redirecting to one of the Complainant's websites), indicates the Respondent's intention to create a risk of affiliation or association with the Complainant and its mark. [WIPO Overview 3.0](#), section 2.5.1.

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 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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must, in addition to the matters set out above, demonstrate that the disputed domain name has been registered and is being used in bad faith.

The undisputed prima facie evidence establishes that the Respondent is not affiliated with the Complainant and has no license or other authorisation to use the Complainants' trademarks.

Respondent registered the disputed domain name well after the Complainant's trademark was in use. The Panel finds that the Respondent was aware of the Complainant's trademark and business when registering the disputed domain name. Not only this Panel considers that the disputed domain name for itself is a strong indication that the Respondent was aware of the Complainant's trademark AUCHAN, as it seems more than unlikely that the Respondent would have created – randomly – the disputed domain name that is almost identical with the Complainant's distinctive trademark (cf. *Motul v. Contact Privacy Inc. Customer 0138693539 / Konstantin Speranskii*, WIPO Case No. [D2016-2632](#)). Also, the disputed domain name was redirected to the Complainant's website at "www.auchan-retail.com", which is a clear evidence of the Complainant having actual knowledge of the Complainant's trademark.

The Panel therefore concludes that the Respondent registered the disputed domain name in bad faith.

Based on the record in this proceeding, it is also undisputed that the disputed domain name redirected Internet users to the Complainant's own website at "www.auchan-retail.com".

Use of a domain name incorporating a trademark by an unauthorized third party to redirect Internet users to a complainant's (or a competitor's) website is evidence of bad faith under paragraph 4(b)(iv) of the Policy. See [WIPO Overview 3.0](#), section 3.1.4 ("Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: [...] redirecting the domain name to the complainant's (or a competitor's) website, [...]").

A respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant. See *Ann Summers Limited v. Domains By Proxy, LLC / Mingchun Chen*, WIPO Case No. [D2018-0625](#) ("[T]he redirection from the disputed domain name to Complainant's official website reinforces the likelihood of confusion. Internet users are likely to consider the disputed domain name as in some way endorsed by or connected with Complainant, particularly taking into consideration the reputation of the Mark [...] UDRP panels have pointed out in previous redirection UDRP cases, that as long as the complainant does not itself control the disputed domain name, it could be redirected to an unauthorized site at any time.").

Furthermore, the disputed domain name does not resolve to a website of the Respondent, such passive holding use of a domain name does not prevent a finding of bad faith under the Policy. (See, e.g., *Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also [WIPO Overview 3.0](#), section 3.3.).

While UDRP panels will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark;

Based on the record in this proceeding, the Panel is satisfied that the Complainant's AUCHAN mark is highly distinctive and well-known. The Panel has already noted that the Respondent was aware of this trademark when registering the domain name.

- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;

Respondent failed to provide any response or evidence of actual or contemplated good-faith use. Given that the Complainant's AUCHAN mark is solely connected with the Complainant, and noting the composition of the disputed domain name, it is not susceptible to be use in a good faith sense.

The circumstances of the present case are sufficient to establish bad faith passive holding of the disputed domain name.

The Panel therefore concludes that the Respondent's registration and use is a clear-cut case of cybersquatting and that the Complainant has also satisfied their burden under paragraph 4(a)(iii) 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 name <auchan-retailgroup.com> be transferred to the Complainant.

/Lorenz Ehrler/

Lorenz Ehrler

Sole Panelist

Date: June 28, 2024