

ADMINISTRATIVE PANEL DECISION

Elo v. Privacy service provided by Withheld for Privacy ehf / Stuart Noah, Henry Petio, Stuart Roger, CHRISTIAN MELLER, Christ Evans, Frandin Frederic, and CATHERYN CHAMPS
Case No. D2022-1057

1. The Parties

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

The Respondents are Privacy service provided by Withheld for Privacy ehf, Iceland / Stuart Noah, United Kingdom, Henry Petio, United Kingdom, Stuart Roger, France, CHRISTIAN MELLER, France, Christ Evans, France, Frandin Frederic, United Kingdom, CATHERYN CHAMPS, Belgium (collectively identified as the "Respondents").

2. The Domain Names and Registrars

The disputed domain names <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com>, <admin-auchan.com>, <auchan-groups.com>, <commandes-auchan.com> and <b2b-auchan-retail.com> are registered with Combell NV and NameCheap, Inc. (collectively identified as the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 28, 2022, with respect to the disputed domain name <auchan-international.com>. On March 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 31, 2022, 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 April 4, 2022, requesting to add the remaining disputed domain names to the Complaint. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 15, 2022, providing the registrant and contact information

disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed a new amended Complaint on June 20, 2022.

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 June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. None of the Respondents filed any response. Accordingly, the Center notified the Respondents’ default on July 20, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on July 25, 2022. 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, previously known as Auchan Holding SA, is a multinational retail group. Founded in 1960, the company has grown throughout its history and is now the 11th largest food retailer in the world, operating in 17 countries, across Europe, Africa, and Asia. Additionally, with 354,851 employees worldwide, the Complainant is also the 35th largest employer in the world.

The Complainant is the owner, through its subsidiaries Auchan Holding and Groupe Auchan Société Anonyme, of a number of AUCHAN trademarks (the “AUCHAN Trademark”) registrations throughout the world, among which are:

- International Trademark Registration No. 284616, registered on June 5, 1964, in respect of goods in classes 3, 9, 11, 25, 29, and 32;
- International Trademark Registration No. 332854, registered on January 24, 1967, in respect of services in classes 35, 36, 37, 38, 39, 40, 41, and 42; and
- International Trademark Registration No. 625533, registered on October 19, 1994, in respect of goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42.

The Complainant has registered and operates over 600 domain names featuring the AUCHAN trademark including <auchan.fr> and <auchan-retail.com>.

The disputed domain names were registered between July 5, 2021 and March 23, 2022. At the time of filing of the Complaint, all disputed domain names, apart from <auchan-international.com>, resolved to inactive websites. At the time of the filing of the Complaint, the disputed domain name <auchan-international.com> resolved to a website for the Registrar Namecheap, which stated that the domain name was suspended.

5. Parties’ Contentions

A. Complainant

The Complainant submits that a consolidation of the Complaint, which is filed against multiple Respondents, is appropriate in this case *inter alia* since:

- All seven (7) disputed domain names share a similar composition: the Complainant’s trademark combined with a generic term via a hyphen, and ending in the Top-Level Domain “.com”;

- The disputed domain names <auchan-international.com> and <auchan-groupes.com> share the same email address;
- The disputed domain names <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com>, <auchan-groups.com>, and <b2b-auchan-retail.com> were all created between February 17 - March 23, 2022, with the same Registrar;
- The disputed domain names <admin-auchan.com> and <commandes-auchan.com> were both created in July with the same composition as <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com>, and <auchan-groups.com>, and the same registrar as three of the disputed domain names;
- The disputed domain names <auchan-international.com> and <auchan-retail-groups.com> have addresses and phone numbers that are nearly identical;
- The disputed domain names <auchan-groupes.com> and <auchan-groups.com> have nearly identical addresses;
- The disputed domain name <b2b-auchan-retail.com> has false information - Cambridge is not a city in Belgium;
- The disputed domain names <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com>, and <admin-auchan.com> were all involved in email phishing schemes, with the disputed domain names <auchan-international.com>, <auchan-retail-groups.com>, and <auchan-groupes.com> targeting the same Complainant employee;
- The disputed domain names <auchan-groupes.com> and <auchan-groups.com> are nearly identical in composition and were created within four (4) days of each other at the same registrar;
- The disputed domain names <auchan-international.com>, <auchan-groupes.com>, and <auchan-groupes.com> use a similar email: "[...]@auchan-group(s)";
- All seven (7) disputed domain names are not actively being used, with the disputed domain name <auchan-international.com> resolving to a registrar holding page and the remaining disputed domain names all resolving to inactive, blank websites with no content.

This above evidence, when taken as a whole, indicates that it is highly likely that all the seven (7) disputed domain names are being controlled by a single entity, and thus are subject to common control, which indicates that consolidation of multiple Respondents is appropriate, under paragraphs 3(c) and 10(e) of the Rules.

As far as the substantive matters are concerned the Complainant submits that the disputed domain names are confusingly similar to the trademarks in which it has rights. The disputed domain names comprise the Complainant's AUCHAN trademark, one or more of the terms "international", "retail groups" "groups", "groupes", "admin", "commandes," "b2b", and "retail", and all under the generic Top-Level-Domain ("gTLD") ".com".

The Complainant further submits that the Respondents have no rights or legitimate interests 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 license, authorization or permission to use the Complainant's trademark in any manner, including in domain names nor are the Respondents commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy, nor have or are the Respondents currently making legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy. Furthermore, at the request of the Complainant's representative, the relevant Registrar has suspended the following disputed domain names <auchan-international.com>,

<auchan-retail-groups.com>, <auchan-groupes.com> and <admin-auchan.com> as the Respondents were previously using these domains names to send fraudulent emails which had the appearance of coming from the Complainant's employees. In addition, on the disputed domain name <admin-auchan.com> the Respondents set up a fraudulent email address "[...].@admin-auchan.com" to send emails to the Complainant's customers from a leading person within the Complainant's holding company fraudulently seeking a B2B partnership.

Finally, the Complainant submits that the disputed domain names were registered and are being used in bad faith. Given the Complainant's renown and goodwill worldwide, it would thus be inconceivable for the Respondents to argue that they did not have knowledge of the Complainant's trademark when they registered the disputed domain names. This is supported by the fact that the Respondents have engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy by registering seven (7) domain names infringing upon the Complainant's trademark rights. Concerning the bad faith use, the Complainant submits that until the disputed domain names were suspended the Respondents used the disputed domain names <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com> and <admin-auchan.com> to send fraudulent emails which had the appearance of coming from the Complainant's employees, just as the Respondents used the disputed domain name <admin-auchan.com> to set up a fraudulent email address "[...].@admin-auchan.com" to send emails to the Complainant's customers from a leading person within the Complainant's holding company fraudulently seeking a B2B partnership. The Complainant also submits that the Respondents use of a privacy service to hide its identity has been held by past UDRP panels as further evidence of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matter: Consolidation

Before addressing the three elements of the Policy, the Panel must first address a procedural issue, namely whether to accept in the present procedure that the Complaint against multiple Respondents, may be consolidated.

As it is stated in the first paragraph of section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") that "Where a complaint is filed against multiple Respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". Paragraph two of the section then lists several factors that UDRP panels have considered in determining whether a consolidation is appropriate.

In this case, the disputed domain names are all "constructed" the same way, six (6) of them are registered with the same registrar and albeit that the disputed domain name <auchan-international.com> was registered with a different Registrar, this disputed domain name shares the same contact information as one of the other disputed domain names. Applying the principles listed in section 4.11.2 of the [WIPO Overview 3.0](#) to the facts of this case, and in the absence of any response from the Respondents, the Panel finds that the Complainant has established more likely than not that the Respondents are either one and the same person, entity, or network, or are somehow connected to each other, and that the disputed domain names are therefore subject to common ownership or control.

The Panel further finds that consolidation would be fair and equitable to all parties and procedurally efficient.

The Panel therefore allows the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules.

6.2. Substantive Matters of the Complaint

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondents are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, 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.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names are all confusingly similar (in the sense of the Policy) to the Complainant's registered trademark AUCHAN.

The disputed domain names all comprise the Complainant's AUCHAN trademark in its entirety together with various terms and one or two hyphens. None of the additional terms nor hyphens prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The gTLDs ".com" is a standard registration requirement and as such generally disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to all the disputed domain names.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondents to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondents have no rights or legitimate interests in the disputed domain names.

There is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain names on the part of the Respondents in these proceedings. Moreover, noting the use of the majority of the disputed domain names for a fraudulent email scheme whereby the Respondents impersonated the Complainant, the Panel finds that such illegal use can never confer rights or legitimate interests upon the Respondents. [WIPO Overview 3.0](#), section 2.13.

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain names in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain name registrations to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has registered the domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain names, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder'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 holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain names have been registered and are being used in bad faith.

Given the circumstances of the case, in particular the extent of use and reputation of the Complainant's trademark AUCHAN, and the fact that the Respondents have registered 7 disputed domain names that are confusingly similar to the Complainant's mark, the Panel finds that the Respondents have registered the disputed domain names with prior knowledge of the Complainant and the Complainant's marks.

The Panel therefore finds that the disputed domain names were registered in bad faith.

The Panel further finds that the Complainant has submitted sufficient evidence to support the Complainant's claim that all the disputed domain names have been used in bad faith, see section 3.1 of the [WIPO Overview 3.0](#)

The fact that most of the disputed domain names are presently suspended does not prevent a finding of bad faith use, in a case like this where the disputed domain names incorporate the Complainant's distinctive trademark AUCHAN; the Respondents have not replied to the Complainant's contentions; there appears to be no conceivable good faith use that could be made by the Respondents of the disputed domain name; the Respondents are clearly attempting to hide its true identity and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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, <auchan-international.com>, <auchan-retail-groups.com>, <auchan-groupes.com>, <admin-auchan.com>, <auchan-groups.com>, <commandes-auchan.com> and <b2b-auchan-retail.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: August 10, 2022