

## ADMINISTRATIVE PANEL DECISION

ELO v. Privacy Service Provided by Withheld for Privacy ehf / Name Redacted

Case No. D2022-2493

### 1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <hypermarcheauchan.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 July 8, 2022. On July 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 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 July 11, 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 July 15, 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 Respondent of the

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<sup>1</sup> The Respondent appears to have used the name of a third party, i.e. an employee of the Complainant, 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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](#).

Complaint, and the proceedings commenced on July 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 9, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on August 12, 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, formerly known as Auchan Holding SA, is a historic French retailer. With over 350,000 employees, it operates supermarkets in 17 countries, in Europe, Asia and Africa, and is ranked 11th largest food retailing group in the world as of December 2020, its consolidated revenue, excluding taxes, exceeded 32 billion euros.

The Complainant relies in particular on the following trade mark rights as a basis of its Complaint:

- French trade mark AUCHAN (word) No. 1258525 of January 25, 1984;
- International trade mark AUCHAN (word) No. 625533 of October 19, 1994;
- European Union trade mark AUCHAN (logo, displayed below) No. 283101 of August 19, 2005.



The Complainant also owns hundreds of domain names containing the element AUCHAN, including <auchan-retail.com> and <auchan.fr>.

The disputed domain name was registered on May 23, 2022 through a privacy service. In the course of this proceeding, the Registrar disclosed the identity of the Respondent, details the Complainant contends correspond to an impersonation of an employee of the Complainant.

The disputed domain name resolves to a page with a number of pay-per-click ("PPC") proposals, some of which relate to supermarkets which compete with the Complainant.

More importantly, the disputed domain name was used to create an email address which is used to send messages to potential suppliers. Annexed to the Complaint are three specimen of phishing emails. One of these is drafted as follows (in English in the original message):

"Hello sir madam,

I am [employee of the Complainant], Purchasing Manager for Auchan Hypermarchés, a company specializing in the hypermarket sector.

Following the visit to your website, we are interested in some of your products and we are looking for new partners and suppliers who could help us honor our current orders and also accompany us on many ongoing projects.

We hope you will become one of our suppliers.

Waiting to get back to you.

Cordially

[AUCHAN logo]

AUCHAN HYPERMARCHÉ  
PURCHASE MANAGER  
[employee of the Complainant]

[full address, company's number, VAT number of Complainant, etc.]”

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant's arguments in support of its Complaint can be summarized as follows:

First, it claims that the disputed domain name is confusingly similar to the Complainant's trade marks AUCHAN. It states in particular that the “Respondent has added the generic, descriptive term ‘hypermarché’ to Complainant's AUCHAN trade mark, thereby making the Disputed Domain Name confusingly similar to Complainant's trade mark. The fact that such term is closely linked and associated with Complainant's brand and trade mark only serves to underscore and increase the confusing similarity between the Disputed Domain Name and the Complainant's trade mark”. The Complainant adds that the use by the Respondent of the disputed domain name contributes to the confusion, as it passes himself off as an employee of the Complainant and uses its registered trade marks in his emails.

Second, it indicates that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant and has not been authorized to use its trade mark AUCHAN. Besides, the phishing scheme put in place by the Respondent shows that the latter is not making a *bona fide*, legitimate offering of goods and services under the disputed domain name: “Respondent has set up the e-mail address [...] to impersonate one of Complainant's employees, and send phishing emails to Complainant's unsuspecting customers, seeking to confuse them into entering supply partnerships with Respondent, presumably for its own benefit. Further, in order to support this impression, Respondent has included Complainant's logo, full address, French commercial registration number and their VAT number”. The Complainant indicates also that the operation of a PPC scheme is not a legitimate use either, in particular as it refers users to competitors of the Complainant: “the website at which the Disputed Domain Name resolves features multiple third-party links for services that compete with Complainant, such as ‘Grocery Food Delivery Services’ or ‘Shopping Online Grocery’. Further, Respondent's website also features links that directly reference Complainant's competitors, including ‘Walmart+’ or ‘Amazon Grocery Store’”. Finally, the Complainant highlights the use of a privacy shield service by the Respondent as evidence of lack of legitimate interest.

Third, the Complainant claims that the disputed domain name was registered and used in bad faith. It highlights that its trade mark AUCHAN is well-known worldwide, and that the Respondent has positively demonstrated a knowledge and significant familiarity with its brands and business. Also, the operation by the Respondent of the phishing scam, described above, shows that the disputed domain name is used in bad faith.

### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (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. The consensus view of UDRP panels is that this is primarily a standing requirement.

The Complainant owns several trade mark rights over the sign AUCHAN. This trade mark is fully reproduced, and perfectly identifiable, in the disputed domain name. The addition of the word “hypermarche” 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 trademarks of the Complainant.

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 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 clearly satisfied its burden of evidence here: it has argued that it does not know the Respondent, 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 use by the Respondent of a sophisticated phishing scheme demonstrates a lack of rights or legitimate interests.

Additionally, other factors demonstrate the lack of rights or legitimate interests of the Respondent in this matter: the operation of a PPC scheme competing with or capitalizing on the AUCHAN trade mark and the use of a privacy shield with underlying registration details impersonating an employee of the Complainant.

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

On the one side, the Respondent 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 AUCHAN; it also contains the word "hypermarche", which means "supermarket" in French and is therefore highly likely to be perceived by third parties as being an official domain name of the Complainant. Also, the Respondent concealed his identity when registering this domain name.

On the other side, the Respondent operates a phishing scheme to the detriment of the Complainant and of the companies with which it established contacts. By using a misleading email address, in which he has reproduced trade mark, logo, and full data of the Complainant, in order to impersonate it, the Respondent lured potential providers and attracted them for its commercial gain.

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

## 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 <hypermarcheauchan.com> be transferred to the Complainant.

*/Benjamin Fontaine/*

**Benjamin Fontaine**

Sole Panelist

Date: August 22, 2022