

ADMINISTRATIVE PANEL DECISION

ELO v. Ajeet Mahajan
Case No. D2024-4886

1. The Parties

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

The Respondent is Ajeet Mahajan, India.

2. The Domain Names and Registrar

The disputed domain names <fr-auchan-retail.com> and <order-auchan.com> are registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 26, 2024. On November 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 3, 2024, 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 (Registrant Information Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 December 9, 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 December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2025.

The Center appointed Olga Zalomiy as the sole panelist in this matter on January 15, 2025. 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 is a holding company for Auchan Retail International, a multinational retail group founded in France. The Complainant owns numerous trademark registrations for the AUCHAN trademark, such as:

- The International trademark registration No. 332854 for the AUCHAN mark (word and design), registered on January 24, 1967;
- The International trademark registration No. 952847 for the AUCHAN mark, registered on August 10, 2007;
- The European Union trademark registration No. 000283101 for the Auchan mark, registered on August 19, 2005.

The Complainant also owns the domain name <auchan.fr> registered on February 8, 1997. According to the website "www.similarweb.com", the Complainant's website has received an average of 8.0 million visits between June and August 2022. Additionally, the Complainant's website was ranked 2nd in its category in France.

The Respondent registered the disputed domain names on June 21, 2024. The disputed domain names do not direct to any active websites.

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.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its AUCHAN trademark despite the addition of the generic terms "fr", "order" and "retail", or hyphens. The Complainant argues that applicable generic Top-Level ("gTLD") domain names, which are viewed as standard registration requirements, are not taken into account.

The Complainant alleges that it has no association with the Respondent and has not granted authorization for the Respondent to use its trademarks. The Complainant argues that there is no evidence to suggest that the Respondent is commonly known by the disputed domain names. The Complainant contends that the Respondent has neither engaged in noncommercial nor fair use of the disputed domain names, as they have not been actively used.

The Complainant contends that by registering the two disputed domain names that fully incorporate the Complainant's trademark together with the generic terms that relate to the Complainant, the Respondent created the disputed domain names that are confusingly similar to the Complainant's trademark. In the Complainant's view, such behavior demonstrates the Respondent's knowledge of and familiarity with the Complainant's mark and business. Additionally, the Complainant argues that the Respondent's passive holding of the disputed domain names supports a finding of bad faith use, given that no good faith use of the disputed domain names that are confusingly similar to the Complainant's mark is possible. The Complainant argues that the Respondent's use of a privacy service to hide its identity serves as further evidence of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to each of the disputed domain names:

- (i) the disputed domain names are 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 names; 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 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 Panel finds the AUCHAN mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The inclusion of the gTLD ".com" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, the country code "fr", hyphens, "retail" and "order" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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.

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 evidence on record shows that the Respondent is not commonly known by the disputed domain names. The Respondent has not been authorized by the Complainant to use the Complainant's trademark in a domain name. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain names or uses it for bona fide offering of goods or services, because the disputed domain names do not direct to active websites.

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 the Respondent registered the disputed domain names incorporating the Complainant's trademark almost sixty years after the Complainant's first trademark registration. The Respondent's lack of rights or legitimate interests in the disputed domain names, the absence of a credible explanation for choosing the disputed domain names, and the reputation of the Complainant's trademark, indicate that the disputed domain names were registered in bad faith.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain names and a pattern of bad faith conduct¹ and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 <fr-auchan-retail.com> and <order-auchan.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: January 24, 2025

¹ See [WIPO Overview 3.0](#), section 3.1.2, which explains that UDRP panels have established that a pattern of bad faith conduct requires as few as two instances of abusive domain name registration.