

## **ADMINISTRATIVE PANEL DECISION**

ELO v. sultan itlyashev  
Case No. D2025-0726

### **1. The Parties**

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

The Respondent is sultan itlyashev, France.

### **2. The Domain Names and Registrar**

The disputed domain names <auchanclub-employees.com> <auth-auchan.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2025. On February 21, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 22, 2025, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 26, 2025, 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 February 27, 2025.

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 March 3, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2025.

The Center appointed William Lobelson as the sole panelist in this matter on April 4, 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 ELO, a holding company that owns subsidiaries inter alia the French supermarket chain AUCHAN (known as Auchan Retail International).

It owns multiple trademark registrations for AUCHAN:

French Reg. No. 1258525 AUCHAN of January 25, 1984  
European Union Reg. No. 000283101 AUCHAN of August 19, 2005  
International Reg. No. 939832 AUCHAN of February 27, 2007

The disputed domain name <auchanclub-employees.com> was registered on January 4, 2025 and the disputed domain name <auth-auchan.com> was registered on January 14, 2025.

None are in actual use, as they do not currently route towards any active web page. But the Complainant has brought evidence (screenshots) that before the present Complaint was filed, both disputed domain names routed to a web page that reproduced the Complainant's mark AUCHAN, in the same typeface and color code as the Complainant's, associated with the word "retail". It is reminded that the Complainant's subsidiary that runs a chain of supermarkets is known as Auchan Retail International. The background of the said web page represented shelves of fresh fruit and vegetables. A frame bearing the terms "AUCHAN RETAIL Espace Formation" and inviting Internet users to enter their email address was displayed on the web page.

#### **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 earlier trademark, that the Respondent has no rights or legitimate interests in the disputed domain names, and that the disputed domain names have been registered and used in bad faith.

The Complainant puts the emphasis on the fact that the disputed domain names were used in relation to an impersonating web page, reproducing the Complainant's trademark and trade dress, for phishing purposes.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the

Complainant has rights (paragraph 4(a)(i));

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and

(iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

### **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.

Based on the available record, the Panel finds 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 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.

Although the addition of other terms (here "club", "employees" and "auth") may bear on assessment of the second and third elements, the Panel finds the addition of such terms do 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.

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 particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain names. The Complainant contends that the Respondent does not make any bona fide or legitimate non-commercial fair use of the disputed domain names.

In addition, the disputed domain names were used in connection with a fraudulent website that impersonates the Complainant.

Panels have held that the use of a domain name for illegitimate activity, here impersonation/passing off, likely for phishing purposes, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

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.

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 illegitimate activity, here claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

In the present case, the Panel notes that the Complainant claims that the Respondent has registered the disputed domain names and uses the same in bad faith, even though the said domain names do not presently resolve towards any active webpage.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, such as the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (which constitutes passive holding), does not as such prevent a finding of bad faith. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the respondent's concealment of its identity. UDRP panels may draw inferences about whether a domain name was used in bad faith given the circumstances surrounding the registration.

The Complainant has substantiated the fact that its trademark AUCHAN, which has been registered and used in France for years, now benefits from a high level of public awareness. The identity of the Respondent was disclosed by the Registrar and it was confirmed that the Respondent was based in France. The fact that the Respondent used a French address implies that he is a French resident or at least has connections with France, where the Complainant's mark is very well known. In light of the above, this Panel finds hard to believe that the Respondent did not have the Complainant's trademark in mind when he registered the disputed domain names.

Regarding the high similarity of the disputed domain name with the Complainant's trademark AUCHAN, it is highly unlikely that the disputed domain names could have been registered and then used in good faith.

The disputed domain names are currently not directed to any active web page. However, the Complainant has shown that the Respondent was previously using the disputed domain names to impersonate the Complainant, which is a clear indication that the Respondent knew about the Complainant and had his trademark in mind when it registered the disputed domain names.

The Panel also notes that the Respondent did not reply to the Complaint. The Panel infers from the above that the Respondent acted in bad faith when he registered the disputed domain name, and still acts in bad faith.

The fact that the disputed domain names were used for to impersonate the Complainant, most likely for phishing purposes, as they resolved to a website that imitated the Complainant's and provided opportunities for unsuspecting Internet users to contact the Respondent by entering their email addresses, demonstrates a use in bad faith of the disputed domain names.

The disputed domain names currently resolving to an inactive page does not alter the finding that the disputed domain names were registered and used 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.

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 <auchanclub-employees.com> and <auth-auchan.com> be transferred to the Complainant.

*/William Lobelson/*

**William Lobelson**

Sole Panelist

Date: April 17, 2025