

PANEL DECISION

ELO v. Name Redacted

Case No. DEU2023-0007

1. The Parties

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

The Respondent is Name Redacted¹.

2. The Domain Names, Registry and Registrar

The Registry of the disputed domain names <auchan-groupe.eu> and <auchan-sa.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain names is EURid vzw.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 21, 2023. On February 27, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain names. On March 1, 2023, the Registry 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 March 2, 2023, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 7, 2023.

¹ Considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel also refers to UDRP cases, where appropriate. Noting the Respondent's use of one of the Complainant's senior employees' name for the registration of the disputed domain name, the Panel decided to redact the name of the named Respondent, adopting the criterion of the panel in *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#) ("The Panel has decided that no purpose is to be served by including the named Respondent in this decision, and has therefore redacted its name from the caption and body of this decision. The Panel has, however, attached as Annex 1 to this Decision an instruction to the Registrars regarding transfer of the disputed domain name that includes the name of the referenced co-Respondent, and has authorized the Center to transmit Annex 1 to the Registrars as part of the order in this proceeding. However, the Panel has further directed the Center, pursuant to paragraph 4(j) of the Policy and paragraph 16(b) of the Rules, that Annex 1 to this Decision shall not be published based on exceptional circumstances").

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 10, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was March 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Alexandre Nappey as the sole panelist in this matter on April 11, 2023. 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 ADR Rules, Paragraph B(5).





4. Factual Background

The Complainant is ELO, previously known as Auchan Holding SA, a French industrial group which is one of the world’s leading companies in the food retailer industry.

Auchan Retail (“Auchan”) is a multinational retail group headquartered in Croix, France.

Founded in 1960 by Gérard Mulliez, the company has grown exponentially throughout its history and is now the 11th largest food retailer in the world, operating in 12 countries, across Europe and Africa. Additionally, with 163,098 employees worldwide, Auchan is also the 32nd largest employer in the world.

The Complainant is the owner of numerous worldwide trademark registrations for the mark AUCHAN. For example:

Trademark	Jurisdiction / TM Office	Registration Number	Registration Date	Classes
	EU / EUIPO	000283101	19.08.2005	01 to 41
	EU / EUIPO	004510707	19.01.2007	35, 38
AUCHAN	WO / WIPO	284616	05.06.1964	03, 09, 11, 25, 29, 32
AUCHAN	WO / WIPO	332854	24.01.1967	35 to 42
AUCHAN	WO / WIPO	625533	19.10.1994	01 to 42
	WO / WIPO	1011777	19.02.2009	01 to 45
	FR / INPI	1244726	09.09.1983	01 to 45

The Complainant also developed its presence on the Internet and is the owner of numerous domain names consisting of the mark AUCHAN. For example: <auchan.fr>, <auchan.com>, <auchan.net> and others.

The disputed domain names <auchan-groupe.eu> and <auchan-sa.eu> were both registered on June 1, 2022.

The disputed domain names resolve to inactive websites.

According to the Complainant, the Respondent has used the disputed domain name <auchan-groupe.eu> to send phishing emails to various companies from an email address “[...]@auchan-groupe.eu” using the name of an employee of the Complainant.

Copies of those emails have been annexed to the Complaint.

5. Parties’ Contentions

A. Complainant

- Identity or confusing similarity:

First the Complainant indicates that the disputed domain names <auchan-groupe.eu> and <auchan-sa.eu> are confusingly similar with its prior trademarks AUCHAN. The domain names wholly incorporate the Complainant’s trademarks AUCHAN with the mere addition of the generic, descriptive terms “groupe” (a French word meaning “group”) and “sa” (the acronym for “Société Anonyme”, a common French company legal form), which does not diminish the confusing similarity.

- Rights of legitimate interests:

The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant’s trademarks in any manner, including in domain names. The Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademark.

The Respondent is not commonly known by the disputed domain names, which evidences a lack of rights or legitimate interests.

The Complainant also states that the Respondent’s previous use of the disputed domain name <auchan-groupe.eu> does not constitute a *bona fide* offering of goods or a legitimate noncommercial or fair use. The Respondent was previously using the disputed domain name for the sole purpose of sending fraudulent emails, which had the appearance of coming from one of the Complainant’s employees.

More specifically, the Respondent has set up the e-mail address “[...]@auchan-groupe.eu” to impersonate one of the Complainant’s senior employees (CEO of Auchan Retail France) and send phishing emails to the Complainant’s unsuspecting customers, seeking to confuse them into entering supply partnerships with the Respondent, presumably for its own benefit.

The Complainant concludes that the lack of the Respondent’s rights or legitimate interests in respect of the disputed domain names is evident.

- Bad faith:

Finally, on the third element of the Policy, the Complainant claims that the Respondent acted in bad faith when registering and using the disputed domain names.

Registration took place in bad faith as the Respondent necessarily knew AUCHAN trademarks which are known internationally.

Moreover, the Respondent has used the disputed domain name <auchan-groupe.eu> to perpetuate a phishing scam in which it has sent emails impersonating the CEO of Auchan Retail France to unsuspecting customers. As such, the Respondent has demonstrated a knowledge of and familiarity with the Complainant's brand and business. In light of the facts set forth within this Complaint, it is "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the disputed domain names were registered.

The Respondent has registered and used the disputed domain name <auchan-groupe.eu> for purposes of launching a phishing attack, which is a clear evidence of bad faith registration and use.

As part of this fraud, the Respondent created an email address based on the domain "@auchangroupe.eu" and included information about the Complainant's business, including the Complainant's logo and links to the Complainant's official websites, in its phishing emails, to increase the likelihood of confusion. In these emails, the Respondent sought to fool the Complainant's customers into believing it sought to establish supply partnerships with them, presumably for its own benefit. The Respondent's efforts to masquerade as the Complainant in an attempt to solicit sensitive, financial information from unsuspecting people certainly constitute fraud, which must be considered bad faith registration and use of the disputed domain name.

The disputed domain names currently resolve to inactive sites and are not being used. Past panels under the ADR Rules have determined that passively holding a domain name can constitute a factor in finding bad faith registration and use.

The disputed domain names can only be taken as intending to cause confusion among Internet users as to the source of the disputed domain names, and thus, the disputed domain names must be considered as having been registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

In the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

According to Article 4.4 "Registration and revocation of domain names" of the Regulation (EU) 2019/517 of the European Parliament and of the Council on the implementation and functioning of the .eu top-level domain name:

"A domain name may also be revoked, and where necessary subsequently transferred to another party, following an appropriate ADR or judicial procedure, in accordance with the principles and procedures on the functioning of the .eu TLD laid down pursuant to Article 11, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, and where it:

- (a) has been registered by its holder without rights or legitimate interest in the name; or
- (b) has been registered or is being used in bad faith."

The criteria (a) and (b) provided in Article 4.4 are alternative.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Panel has to decide if the disputed domain name "is identical or confusingly similar to a name in respect of which a right is established by Union or national law", as provided in the above cited Article 4.4 "Registration and revocation of domain names" of the Regulation (EU) 2019/517.

The Panel is satisfied that the Complainant owns exclusive trademark rights in AUCHAN.

The Panel finds that the disputed domain names are confusingly similar to the registered AUCHAN trademarks owned by the Complainant.

Indeed, the disputed domain names incorporate the entirety of the Complainant's AUCHAN trademark with the mere addition of a hyphen, the word "groupe" ("group" in French) on the one hand and "SA" on the other hand (the acronym for "Société Anonyme", a French company legal form).

The Complainant's trademark AUCHAN is recognizable in each of the disputed domain names, and the addition of other terms does not prevent a finding of confusing similarity.

Pursuant to section 1.7 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) which states: "In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." In addition, the .eu Top-Level Domain is disregarded under the first element confusing similarity test. See section 1.11 of the [WIPO Overview 3.0](#).

The Complainant has, therefore, satisfied the requirements of the first element of paragraph B(11)(d)(1)(i) of the ADR Rules.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Under Paragraph B(11)(e) of the ADR Rules, a respondent may demonstrate its rights or legitimate interests in the domain name for purposes of Paragraph B(11)(d)(1)(ii) by showing any of the following circumstances, in particular but without limitation: (1) prior to any notice of the dispute, the respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; (2) the respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or European Union law; (3) the respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

Here, the Complainant has stated that it has not authorized, licensed, or consented to the Respondent any use of its AUCHAN trademark.

It results from these circumstances that the Respondent does not own any rights or legitimate interests in the disputed domain names or is commonly known by the disputed domain names.

In the light of what is stated above, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

In the absence of any submission on the issue from the Respondent, the Complainant has satisfied the second element of paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

The Complainant has sufficiently met the criteria for the second condition under the paragraph B(11)(d)(1) of the ADR Rules, and it is therefore unnecessary for the Complainant to also satisfy the third condition.

Therefore, it is not necessary for the Panel to examine the Complainant's assertions of the Respondent's bad faith registration or use of the disputed domain name.

This Panel notes however that the Complainant has provided sufficient arguments to also indicate the Respondent's bad faith in registering and using the disputed domain name.

It is established indeed that the Respondent has operated a phishing scheme impersonating the Complainant's senior employee and trying to confuse the companies with which it established contacts. The use of a misleading email address with the disputed domain name <auchan-groupe.eu>, to impersonate the Complainant, is evidence of bad faith.

Therefore, the Panel also finds that the disputed domain name <auchan-groupe.eu> was registered and is being used by the Respondent in bad faith.

Moreover, the Panel notes that the fact that the disputed domain name <auchan-sa.eu> resolves to inactive website, does not prevent a finding of bad faith under the doctrine of passive holding. The Panel cannot conceive any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's trademark rights, particularly noting that the Respondent registered two disputed domain names, and nothing prevents the Respondent from using the disputed domain name <auchan-sa.eu> in the same fraudulent manner as <auchan-groupe.eu>.

Therefore, the Panel also finds that the disputed domain name <auchan-sa.eu> was registered and is being used by the Respondent in bad faith.

Accordingly, the third criteria set out in paragraph B(11)(d)(1)(iii) of the ADR Rules is also satisfied.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain names, <auchan-groupe.eu> and <auchan-sa.eu> be transferred to the Complainant².

/Alexandre Nappey/

Alexandre Nappey

Sole Panelist

Date: April 25, 2023

² (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) The remedy sought is transfer of the disputed domain names to the Complainant. As the Complainant is established in France, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517.